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HISTORY  
OF  
THE BENCH AND BAR  
OF  
WISCONSIN.

---

PREPARED UNDER DIRECTION OF  
JOHN R. BERRYMAN.

---

*ILLUSTRATED WITH STEEL ENGRAVINGS.*

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VOL. I.

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CHICAGO:  
H. C. COOPER, JR., & CO.  
1898.





## PREFATORY NOTE.

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The difficulties encountered in the preparation, or, rather, in the supervision of the preparation, of this work were vastly underestimated. Many of them were insurmountable without the aid of others, which aid could not always be obtained. Nevertheless, whatever of merit the work may possess is largely due to the unselfish co-operation of a goodly number of members of the bench and bar, to whom cordial acknowledgment is hereby made.

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Besides the information obtained in the way suggested, all other known means of securing it have been resorted to. These have been so numerous that it has not seemed practicable to give credit in the great majority of cases.

In the preparation of what follows the right to praise has been exercised with much greater freedom than the right to blame. I have, too, in nearly all cases where deceased persons are considered, preferred to give the opinions of others concerning them rather than to express my own. Those opinions, in nearly all cases, were expressed by persons whose means of knowledge were superior to those of the writer's. True, in many cases, they are the opinions of admirers and friends. Notwithstanding this, a careful reading between the lines will, in most cases, give a fairly correct idea of the subject of each sketch.

This work treats of professional men from a professional view point. True, in some cases, the line is not very closely drawn; but in many cases it is. No unfavorable inference should be based on the absence of remarks concerning the character or habits of any individual treated of.

Nothing herein has been prompted by conscious malice or recognized partiality. In cases where there was reason to suspect the existence of

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either, the editor has withheld his own opinions and asked and used those of others who were not so influenced.

An attempt has been made to keep within the record; to present the facts as they exist. The errors in this direction are in under-statement rather than in over-statement; especially is this true where the persons written of are alive. In very many cases it is noticeably true because of the expressed wishes of the persons concerned. But generally, where no contrary desire has been made known, the purpose has been to add to the chronological facts a fair estimate of ability, based upon achievement.

JOHN R. BERRYMAN.

Madison, Wis., August, 1898.



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J. B. Cassoday

# HISTORY OF THE BENCH AND BAR OF WISCONSIN

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## CHAPTER I.

### OUR MAGNA CHARTA AND SOME OF THE STEPS LEADING TO ITS ESTABLISHMENT.

BY JOHN B. CASSODAY.

The most important things in life are generally the most common. The most common things in life are generally the least appreciated. Thus seed time and harvest, summer and winter, day and night, earth and air, fire and water, are indispensable to happiness, and yet comparatively few who enjoy, daily return grateful acknowledgment to the munificent Giver.

In a limited sense, the same is true in respect to some things instituted by men. Among such institutions, none stand out more prominently than government; and yet, comparatively few fully appreciate that the absence of government implies the presence of confusion, disorder, anarchy, terror and unrestrained crime.

The experience of the ages has demonstrated the necessity of some kind of government. This has led to the assertion, in many different forms, to the effect that any government, even the most arbitrary and corrupt, is better than no government. This necessity is the result of the savagery and brutality so common among unregenerated, unrefined, uneducated, uncivilized humanity. Actuated by envy, the first born of the race deliberately murdered his own brother, because he was better than himself. The family of Jacob must have been as well trained as



any in his section of the country, and yet for a supposed personal advantage, eleven of his sons sold one of their brethren into cruel slavery. If diseases are the result of sin, then their prevalence and variety suggest a multitude of sinners. From the beginning of the race in every generation and in every climate, down to the present moment of time, the unrestrained passions and animalism of men have been productive of sorrow, pain, suffering and death—not only in countries where barbarism has reigned, or anarchy has become triumphant, but, at times, in the most civilized and refined nations of the earth. In the infancy of the race, there were but few to govern and they were more or less scattered; and there was only occasionally one with any capacity for government. As the people multiplied, government of some kind was absolutely essential to secure order and the lives, the liberty and the property of the weak and innocent, from those who were strong, brutal, desperate and wicked. In studying governmental evolution, it is, in the language of a recent writer, “a prevalent error . . . to over-estimate intelligence, and under-estimate instinct.”

A government may have originated with a single individual—a select few or a convention of many. It may have been instituted by gradual reconstruction, or by revolution, or even by usurpation—and then maintained by military despotism—yet the necessity for its continuance until supplanted or superseded by some other government, is imperative.

Fortunately, most of us have inherited a government already made. Some have it by adoption. As American citizens, we may be prone to unduly praise our system of government, and hence should proceed with caution. The European statesmen and political writers have no such prejudice. More than fifty years ago, and while men were held in bondage in half the states of our Union, De Tocqueville paid a glowing tribute to our government—especially its judicial department—and particularly referred to the centralization of national power as being balanced by the decentralization of national administration.

Mr. Bryce frankly says: “The constitution (of 1788) deserves the veneration with which the Americans have been accustomed to regard

it. . . . After all deductions, it ranks above every other written constitution for the intrinsic excellence of its scheme, its adaptation to the circumstances of the people, the simplicity, brevity and precision of its language, its judicious mixture of definiteness in principle with elasticity in details."

Mr. Gladstone says that, "as the British constitution is the most subtle organism which has proceeded from progressive history, so the American constitution is the most wonderful work ever struck off at a given time by the brain and purpose of man." With such acknowledgments, coming from such sources, it would ill become an American citizen to under-rate its intrinsic excellence and efficiency. But that great English statesman is too familiar with the elements of the American government to mean, by the words last quoted, that this nation was conceived and born in a day, or that it emanated wholly from the brain of one man or one body of men. On the contrary, he undoubtedly agrees with his liberal friend, Mr. Bryce, in saying: "There is little in that constitution that is absolutely new. There is much that is as old as Magna Charta." Or, as Mr. Webster expressed it in his great argument in the Rhode Island case: "Our American liberty . . . has an ancestry, a pedigree, a history. Our ancestors brought to this continent all that was valuable, in their judgment, in the political institutions of England, and left behind them all that was without value, or that was objectionable." In other words, whatever may be our views respecting animal evolution, all thoughtful and discriminating students of history must agree that there have been running through the ages moral evolution, religious evolution, social evolution, and governmental evolution, and that the American Republic, as it now stands, is the highest governmental result of all such evolutions.

But there can be no such thing as government without the right to govern. "There is and must be in all" forms of government, said Blackstone, "a supreme, irresistible, absolute, uncontrolled authority in which . . . the rights of sovereignty reside." The same author tells us, in effect, that political writers of antiquity allowed only three regular forms of government; and that all others were modifications



of those three: 1. Democracy, where "the sovereign power is lodged in the aggregate assembly consisting of all the free members of a community;" and hence, where public virtue and good intentions are most likely to be found; and therefore it is "usually the best calculated to direct the end of the law," but "frequently foolish in their contrivance, and weak in their execution." 2. Aristocracy, where the sovereign power "is lodged in a council, composed of select members;" and hence, there is more wisdom to invent the means for carrying the desired end into execution; "but there is less honesty than in a republic, and less strength than in a monarchy." 3. Monarchy, where the sovereign power is lodged in a single person; and, hence, most powerful for carrying its mandates into execution; "but then there is imminent danger of his employing that strength to improvident or oppressive purposes."

But the governments of our times are of many varieties. In most, the governing power seeks its own advantage merely, instead of the advantage of the whole state—which, according to Aristotle, marks the distinction between the bad and the good. Obviously, that form of government is best which stimulates and secures the greatest amount of intelligence, wisdom, industry, honesty, public virtue, liberty, patriotism, benevolence and charity to the unfortunate, with sufficient strength and concentration of power to maintain order and domestic tranquillity, and at the same time command respect among the great powers of the earth.

Such being the purposes of government, it is very manifest, that the government and people of any country should be adapted to each other. Thus a country in which a large proportion of the people are intelligent, virtuous and wise, may, and should have a higher, and hence, a more complicated system of government, than a country in which the great mass of the people are ignorant, vicious and foolish. It is still true that ignorance and stupidity sometimes are found in houses of wealth and royalty, as well as in the abodes of poverty and helplessness.

Only a few years ago it was found on attempting to build a railway in one of our western territories, that some of the inhabitants were

so ignorant that they had never seen or heard of a railroad train or a railroad; and had no conception of their operation. If such ignorance is possible in this last half of the nineteenth century, here in the United States, where religion is unrestricted, where common schools are free, where speech is free, and where the press is free and newspapers are spread broadcast throughout the country daily, then what must have been the ignorance of the great mass of the people during the forty centuries preceding the Christian era, and even since, especially before the art of printing was discovered.

Had one language always pervaded the whole earth, universal ignorance would, probably, have been more likely to prevail, but the confusion of tongues at Babel and the diversity of languages which followed, compelled men to study in order to communicate with each other.

True, during the dark periods mentioned, intellectual and spiritual lights of more or less brilliancy appeared from time to time on the Nile, in northern Africa, along the Euphrates and the Tigris, in Palestine, Macedonia, Greece, Rome and other places—nevertheless, the great mass of men must have been unfit to perform any of the functions of government, except, perhaps, to pay tribute and perform services in peace and war.

Under such conditions the only government possible was necessarily simple in its form and direct in its operations. Obviously, the most simple government is the arbitrary rulership of a single individual, whether he is called patriarch, chief, governor, king or monarch.

But a single individual could never govern a vast multitude, occupying an extensive country, except through subordinates. The use of such agencies necessarily developed the agents, and frequently they became superior—morally and intellectually—to the rulers themselves. Such schools of experience tended from time to time to influence and control rulers; and even to modify and change forms of government; and hence, oligarchies, aristocracies, and democracies in the fullness of time and in certain places, made their appearance.

But as the boy never learns to swim until he has been allowed to

go into the water, so the mass of the people in olden times remained ignorant of the functions of government, because they had no participation therein, except as subjects rendering service or paying tribute.

Such oligarchies, aristocracies and democracies were generally developed on the shores of navigable waters, or where commerce had otherwise been established. Nevertheless, they were simple in their conceptions, and rude in their methods of execution. But it has always been found difficult to govern a great multitude of people, even though excessively ignorant, by mere brute force; and so the theocratic principle early made its appearance in Africa, Asia and Europe. It was not the personality of Moses or Joshua that controlled the wandering Israelites, but the voice of God back of them—the history of Joseph, the dividing of the waters, the safe deliverance, the cloud by day and the pillar of fire by night, the water from the rock, the fire in the bush, the manna in the wilderness, the flowing back of the waters of the Jordan.

The one man who chased a thousand was not alone. The monarchy of wicked Saul seems to have been divinely appointed, but it was also divinely improved by David. Solomon prayed for “wisdom and knowledge” to govern his kingdom, and the prayer was granted, but at times he lacked the requisite force of character to govern himself.

Alexander at the head of his army and with conquest in his heart would demolish Jerusalem, but the appearance of the high priest on the border of the city made him conscious of his own inferiority, and he instinctively bowed to the earth in humble reverence of a power higher than armies.

Dogs were worshiped by the Egyptians, but held in contempt by the Jews.

Plato’s communistic republic was wisely rejected by Aristotle and would certainly be unsuitable for the English people at the present time, and much more so for the American. In the time of the Cæsars, Roman citizenship was a good thing to have, especially for one away from home and in trouble, but it was too exclusive; and not of the kind to form the basis of a republic like these United States.



The fundamental conditions for the coming republic, with equal rights secured to all before the law, were education and moral and social culture of the great mass of the people, and graded participation in the functions of government. To effectuate such a purpose, radical changes were essential in the prevailing ethics of the times—the relations of men to their Creator, the relations of men to each other, the relations of men to the church and to the government.

But the requisite seeds were sown in Palestine, along the banks of the Jordan, on the shores of Gennesaret, and in and about Jerusalem. The passions and brutality of men were to be supplanted by spiritual agencies. Ambition for ecclesiastical glory was to be superseded by a love of sacrifice for the poor and the needy. Ambition for civil magistracy and temporal power was to be subordinated to that patriotism and philanthropy which would die for country and for fellow man. Egoism and selfishness were in due time to yield to Altruism and charity. The word neighbor was to have a new significance; and the golden rule of doing unto others as we would have them do unto us, was, in due course of time to be translated into equality for all men before the law and thus to become the rock upon which the coming republic was to be founded.

But these principles were not to become dominant through arbitrary enforcement by civil or ecclesiastical power; but by voluntary acceptance through the persuasive influence of the home, the church, the school, the teachings of patriotic statesmen and social and Christian philosophers.

These germinal principles in the hearts of men gradually tended to transform the civilization of Europe and the world.

To trace their operation and the several advances made would be to give in detail the history of nations, of wars and of the feudal system, the history of municipalities, the history of the corporate church with functions and revenues of its own, the history of Christianity, the history of theocracy, monarchy, aristocracy and democracy—and how the principles of each of these resisted, crossed, jostled and modified each other. Of course the advance was irregular and at times spasmodic,

but when numerous centuries are contemplated as a whole, we discover that in some way the old barbarian monarchies were superseded by religious monarchies, and religious monarchies by imperial monarchies, and imperial monarchies by limited or constitutional monarchies, and constitutional monarchies by oligarchies or aristocracies, and aristocracies by pure democracies, and democracies by firmly established constitutional republics.

War is always cruel, but at times it is the only way of opening the door to knowledge and breaking down the partition walls of bigotry and conceit. The crusaders found the society of the Musselmen, as well as of the Greeks, in advance of their own. If the theocratic despotism of China has been weakened by the penetrating shot of the Japanese soldiers and what has since occurred, it is well.

The free corporate cities between the eleventh and sixteenth centuries, in France, in Holland, in Germany and to the north, afforded the mass of the people an opportunity for participating in the functions of government. True, the great mass of the people within the walls of any city, were, comparatively, ignorant, brutal and savage, with no proper guarantees of order or continuance; and with no established government, yet each was acting under the sanction of an oath; and when magistrates were to be chosen, or important questions of local concern were to be determined, the inhabitants were all summoned to the public square by the tolling of the great bell, and the question at issue there decided by democratic vote. But classes grew up and the spirit of mob violence became furious; and more stable forms of government became necessities. The chartering of free corporate cities prevailed in England. Thus on August 28, 1207, King John granted a charter to Liverpool, whereby that city was to have the liberties and free customs of any free borough; and eight years afterwards the same were guaranteed, not only to Liverpool, but to London and other cities, by Magna Charta.

The Crown had started out as an absolute monarch. But six hundred and eighty-two years ago the 15th day of last June, the enraged people, and the great body of the nobility of England, under the com-

mand of Robert Fitz-Walter, with the flaming title of "Marshal of the Army of God, and the holy church," notwithstanding the Pope had taken part with the King against them, met King John with his lay and spiritual advisers at Runnymede, between Windsor and Staines; and agreed upon that Magna Charta, and affixed their signatures to the same, thereby guaranteeing, among other things, the "unwritten liberties"—secured by the common law—also certain property rights—the free ingress and egress to all traders, unless openly forbidden, free writ of inquisition, as to life or limb—and, in effect, that no man should be deprived of life, liberty or property without due process of law. As strange as it may now seem, eighteen niches between the windows in the House of Lords—the special guardian of the Crown and the Aristocracy—are occupied by the statues of the Barons who aided in extorting that Magna Charta from King John.

By the progressive constitution of that country, the powers of the Crown were, from time to time, gradually diminished; and the personal rights of the people, and the powers of Parliament—especially the House of Commons—gradually increased and strengthened. Thus, there was finally secured to Englishmen something of that individual liberty which had previously been contended for by the barbarians of Germany.

Much of such progress in the British constitution has been since the American revolution; and largely by reason of the establishment of the American republic.

As all students of history are aware, the island of Britain had been settled by numerous races having different habits, customs and language. The mixture of these races was necessarily followed by a commingling of thoughts, customs, manners and laws. The Roman civil and canon laws were there in advance, and prepared the way for the common law, which afterwards became dominant on the island.

Of course that law was, at first, merely traditional and fragmentary, and consisted of but little more than a rude method of settling controversies according to recognized principles of right and justice, instead of some arbitrary power. The old Anglo-Saxon lawsuit was not



by a court and jury as now, but by all the attendant freeman of the hundred, or the county, as the case happened to be; and the trial consisted in the main of wrangle and contention. In the early history of England, the King was the source of all power, but in due course of time Parliament was instituted and the King was required to take an oath to submit to the laws of the realm, and then courts were established, the rules of their proceedings prescribed, and their judgments and reasons for the same entered of record for the benefit of all. The common law and its administration, as a schoolmaster and educator, is rarely comprehended and never over-estimated. It probably impelled Lord Chancellor Francis Bacon to reduce to a system the inductive method of reasoning which has done so much to revolutionize the thought of the world. As the commerce of England opened up new and innumerable industries and avenues of trade, the common law, with its benign influence, kept pace with and stimulated them, and thus its dominions gradually became broadened, strengthened and purified. Undoubtedly it has been a potent factor in many of the reformatations and social advances in Great Britain and America.

In this liberal age it is almost impossible to realize that only three hundred and sixty-two years ago, under the supremacy act of Parliament, in the wicked reign of Henry VIII., with church and state united, Bishop Fisher and Sir Thomas More, the ablest and most pure Lord Chancellor who, up to that time, had graced the woolsack, were cruelly beheaded, because they would not proclaim that the King was the supreme head of the church.

The intolerance and religious persecutions of the sixteenth, seventeenth and eighteenth centuries, in England, peopled the American colonies with much of the best blood and many of the bravest hearts of the world; and such heroes were sufficient in numbers to assimilate, modify and control those who immigrated to the colonies from other countries. As many sects arose in Europe, and especially in the island of Britain, so by reason of such intolerance, many sects settled in the American colonies. The scattered settlements along the coasts, and the weakness and dependency of each sect, tended to make them more

or less respectful and tolerant of the opinions of each other; and the same facts and the strenuous efforts of men like Jefferson, saved the national government and the several states from any union of church and state; although at first, and for a few years only, the two Carolinas, Delaware, Maryland, Massachusetts and New Hampshire seemed to have started on the old highway leading to the old city of destruction. The common law of England and certain acts of Parliament, as well as the rights secured to Englishmen by Magna Charta, were in force in the colonies. Accordingly, controversies were determined by the course of the common law; and, in a local way, all qualified electors were at liberty to participate in the functions of government. For the colonists, therefore, the school of experience was open from start to finish.

These things, necessarily, kept up a lively interest in the current acts of Parliament and the current decisions of the English courts.

But soon after the accession to the throne of that narrow, uneducated, obstinate, and bigoted "slave of deep-rooted selfishness," George III., there appeared in the colonial skies, clouds, portentous with great events, which the wise men of the east like Chatham, Camden, Burke and Charles James Fox would gladly have prevented if they had been able. But man proposes and God disposes. The road to almost every Sinai is through some wilderness. The twelve years immediately preceding the Declaration of Independence were each and all years of serious study and contemplation for every intelligent colonist. It was not so much what the King and Parliament had done, as what they claimed the right to do; and what there was nothing in the British constitution to prevent them from doing.

Thus, in 1775, the British government, speaking through the lips of Lord Chief Justice Mansfield, proclaimed the issue in these words: "My lords, we are reduced to the alternative of adopting coercive measures, or at once submitting to a dismemberment of the empire. Consider the question in ever so many lights, every middle way will speedily lead to either of these extremities. The supremacy of the British legislature must be complete, entire and unconditional or, on the other hand, the colonies must be free and independent. . . .

Concession now is an abdication of sovereignty." These sentiments he reiterated in December, 1775, and in March, 1776. The same doctrine of absolute dominion and complete subjection had just previously been judicially declared by the unanimous opinion of the court of King's Bench.

The colonists accepted the alternative and challenged the power of coercion. Independence was declared and colonial governments were dissolved. The causes which led to that declaration were so vigorously stated by that eminent statesman and illustrious friend of personal liberty, Thomas Jefferson, in the Declaration itself, as to be familiar to all students of American history. And yet there are some foolish enough to believe, or pusillanimous enough to feign, that by the words, "all men are created equal," Jefferson and his compatriots meant that all men were physically equal, mentally equal, morally equal and socially equal, instead of meaning the equal protection of the personal rights of all, as now secured by our fundamental law.

Upon the adoption of the Declaration of Independence and the dissolution of the colonial governments, the work of reconstruction immediately began. What should be the model? The little aristocratic republic of San Marino in the Italian mountains, had hung there like a lone star for over a thousand years; and its structure was undoubtedly studied with great care by the colonial lawyers and statesmen.

The Swiss confederation, with numerous petit states, differing, more or less, from each other, physically, religiously, politically, socially, industrially, and in language—each with almost absolute independence as to all domestic affairs, and leagued together as to foreign affairs—had long been successfully maintained; and was, therefore, of special interest.

The only other government in Europe at that time entitled to be called free, in any sense, was Great Britain, and yet ten years before, Mansfield had publicly admitted that eight millions of people in England alone and twelve millions in England and Ireland together, were without any representation in Parliament. The events which had transpired, and were then transpiring, developed numerous brave, unselfish,



able and patriotic men, of whom Washington may be regarded as the highest type, who studied and labored for the coming republic; and through its ultimate efficiency, for the benefaction of the race.

The framers of the constitutions of the several thirteen newly created states were not only free to study the structures of the three governments mentioned, but to gather political wisdom from Palestine, Greece, Rome, France, Holland, Germany and other nations. The result was that the several constitutions and governments of the respective states differed more or less from each other. Thus Rhode Island organized a state government with unlimited powers, under its old royal charter granted by Charles II. Connecticut did the same, but adopted a short bill of rights. For twelve years Georgia was under a constitution which authorized but one representative body; and that body selected a governor and an executive council from its own members. For fourteen years the legislative power of Pennsylvania was vested in one body, and the executive power in another. But the other states severally created state governments with three separate departments—legislative, executive and judicial, more or less independent of each other—with the legislative department divided into two houses, each having a check upon the other and each responsible for the laws; and the executive with his veto, having a check upon both, with certain limitations upon each department and officer, and certain rights secured to all by written constitutions which could not be changed or modified except by the people acting in their sovereign capacity. Such written constitutions were the best ever devised by men up to that date. As a rule they embodied and thus made permanent most of the safeguards and guarantees contained in the Magna Charta of the mother country, but unfortunately some of them omitted that provision which would have abolished slavery within their borders. The war which followed the Declaration of Independence, and the weakness of the respective states, made the old Articles of Confederation, similar to the Swiss confederation, a necessity—as a league for defense and offense against the common enemy. But as soon as the imminent danger passed, the confederation was found to be a humiliating failure.

After eleven years' experience with thirteen separate and independent states or petit republics, the desire for a more perfect union—commercially and otherwise—became quite common, and so the original constitution of the United States was framed and submitted to the people of the respective states; and finally ratified by them in state conventions called for that purpose. In the discussions leading up to the formation of the constitution, there were two extreme views contended for. The one favored a consolidated nationality, in which the states would be mere subordinate dependencies. The other only favored such a confederation or union as would leave the respective states, as independent sovereignties with the power in each of withdrawing at pleasure. Fortunately for this country and the world, the conservative judgment of the wise men of that day prevailed, and the extreme views mentioned were rejected, and a middle course was pursued; and so it happened that the framers of the original constitution, encouraged by the successful experiments of the several state governments, ventured to create, for the first time in the history of the world, a new and dual system of government for the people of the United States, with certain powers expressly named, delegated to the national government, together with such incidental or implied powers as were necessary or convenient to carry into execution the great substantive powers thus expressly granted, and which powers were largely exclusive, and to that extent abridgments upon the powers of the respective states, and with certain limitations upon the powers thus granted to the federal government, and certain prohibitions against the exercise of certain powers by the United States, or any of the states—in order that the private rights of the citizen in such matters should be protected against all arbitrary power; but otherwise leaving with the respective states all powers not so exclusively granted, nor abridged nor prohibited. Of course there was furious opposition to the adoption of the original constitution. Some fifteen of the delegates in the convention, including Patrick Henry, either left in disgust or refused to sign the instrument. The eighty-five able articles from Jay, Madison and Hamilton in the *Federalist* indicate something of the anxiety of its friends to secure its

ratification by the people of the respective states; and probably it would not have been ratified at all had not promises been made for certain amendments, ten of which were proposed by the first Congress and ratified as early as 1791. The general sentiment of the time is fairly indicated by the fact that those ten amendments, as they now stand in the constitution, are each and all limitations upon the powers, or rather what were then supposed to be the powers of the federal government; and were mostly for the protection of the citizen against its arbitrary powers; and none of them were limitations or prohibitions upon the powers of the respective states, but on the contrary, emphasized the reservation of powers "to the states respectively, or to the people."

Dissatisfaction having arisen because the original constitution authorized a private citizen to sue a sovereign state in a federal court without its consent, the eleventh amendment took away the right in 1798.

To prevent a repetition of the disreputable effort of Aaron Burr to supplant his own associate upon the ticket, Thomas Jefferson, for the presidency, the twelfth amendment was adopted in 1804.

But our Magna Charta was incomplete while men, women and children could be bought and sold on the public markets, not only in half the states of the Union, but in the District of Columbia, and under the dicta of five of the justices of the supreme court of the United States, after holding that they had no jurisdiction, in the Dred Scott case, in all the territories as well. But the crowning glories of American citizenship, through the necessities of the war, at last, came in the form of three constitutional amendments, the thirteenth, adopted in 1865, the fourteenth in 1868, and the fifteenth in 1870, during Grant's first term as President. By these three amendments slavery and involuntary servitude were abolished throughout the land; the rights, privileges and immunities of American citizens were defined, and the respective states expressly prohibited from abridging any of them; and it was therein expressly declared, that no state should "deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." This



includes, and is an improvement upon that great personal guarantee, wrung from an arbitrary king more than six hundred and eighty-two years ago, and by the fifth amendment applied to our national government, one hundred and six years ago; but which some of the state constitutions wholly omitted, or limited to certain classes.

What figures can indicate—what language can express—the expenditure of blood and treasure to secure such grand consummations! To the great and good men who devised and executed and preserved, be the praise.

As some of the most useful inventions consist of a new combination of old elements, so while our dual system of state and national governments embrace many elements that are old, yet some of the elements are new, and the combination is entirely new, and hence, was patentable.

In no other government are the rights of the people so thoroughly guarded. In no other system does so large a per cent. of the people participate in the functions of government; and, hence, it is highly educational, both mentally and morally.

True, it is well calculated to stimulate controversy; but that, necessarily, stimulates study, thought, discrimination and the reasoning faculties—and all those things tend to higher citizenship.

One of the tests by which the comparative efficiency of governments and the contentment of their citizens may be determined, is the amount of military force required in each in time of peace, to preserve order and enforce the laws. Astounding as it may seem to us as American citizens, Italy, with a population of less than thirty-one millions, has a standing army of officers and men of 282,382. France, with a population of less than thirty-nine millions, has a standing army of 494,285 at home, and over 70,000 abroad. Austria and Hungary, with a population of less than forty-two millions, has a standing army of 347,297. Germany, with a population of less than fifty millions, has a standing army of 511,885. Russia, with a population of less than one hundred and twenty millions, has a standing army of 781,574. Great Britain and Ireland are more isolated and since the suffrage act of 1885, the elective franchise has been nearly as general as here, yet with a population of

less than thirty-nine millions, they have a standing army of 106,115 at home, and a still greater number abroad. In broad contrast with all these nationalities, the United States, with a population of more than sixty-five millions, has a standing army of only 27,957, and a large portion of these are employed in keeping the Indians in subjection and another large portion in protecting our own citizens from the savagery of the mob—mostly composed of immigrants, who have never become naturalized and who know nothing and care nothing about the genius or purpose of our dual system of government—led on by those who have been “irreconcilables” in continental Europe—making war upon all existing forms of government. Such irreconcilables, like anarchists, are worse than the Pharisees, for they neither render unto Cæsar the things that are Cæsar’s, nor unto God the things that are God’s. Thus, in this country, obedience to the law, when authoritatively ascertained by our own citizens, is nearly what it should be—spontaneous. Of course the frequency, the size and the successful organization of mobs necessitates standing armies of more or less magnitude, and the cost of such armies stimulates discontent. Every mob has a supposed grievance. Some mobs have a real grievance; but even then, the remedy is worse than the disease. A common mob commits a riot. A rebellious mob commits high treason. To incite or encourage a mob is to incite or encourage riot or treason. To stimulate anarchy is to discourage patriotism and to encourage lawlessness, mob rule and revolution. “Irreconcilables” in governmental affairs, like irreconcilables in religion, are generally the promoters of strife and discord, rather than piety and patriotism. The most dangerous revolutionists is that insidious class who loudly profess loyalty to an existing government and sympathetic devotion to some species of suffering, and thereby secure power through popular suffrage, and then traitorously use the power so obtained, to wholly or partially overthrow the government they professed to love. Such revolutionists are mostly brooded and nurtured in the old world, and in the oligarchies of South America, which for many years have masqueraded as republics. Such men are occasionally found in our own country, applying their deceptive arts with the en-

thusiasm of new converts or original inventors—even to the extent of destroying those personal rights secured by the fundamental law—as for instance, personal liberty, the sacredness of contracts, the right to acquire property or to hold it after it has been acquired. In the language of Mr. Finch, for many years an able judge of New York, in a recent lecture at Cornell, back of ownership, “there was nothing but force—the brutal brawn of the stronger—the spear and club of the chief—superior only by means of tougher muscle and uglier will. . . . But out of all this darkness, slowly and painfully emerged the idea of ownership as a right of the individual”—ownership of “everything which is most precious to a man may depend upon this question: his property, his liberty, his honor and even his life.” In a recent address before the New York Bar Association, that eminent jurist, John F. Dillon, is equally emphatic along the same lines, and declares, that any “denial of the right of private property, or of its full enjoyment, is radically pernicious, or Utopian.” The trend of the decisions in the American courts are all in the same direction. The right to liberty and property secured by the fundamental law includes the right to make and enforce contracts for the acquisition of property. To destroy the rights thus secured, would be to turn the wheels of civilization backward for centuries. The frequent holding up, robbing and wrecking of railroad trains, freighted with precious lives, as well as property, and the organized combinations which enable the few to enrich themselves by oppressing the many, or which compel men against their will to break their contracts with others, induce the repetition of the remark of the Boston D. D., who recently declared in London, that “philanthropy was overdone and justice underdone.” The irreconcilables, the anarchists and the revolutionists mentioned may be exceedingly dangerous in a country where the constitution is no more binding than a mere statute, and may be overturned by a single body of men, elected at the same time by a single surge of popular excitement. Such fear of revolution seems to have been an element in the late election in Great Britain; and so Mr. Gladstone explains, that he is not conscious of ever having expressed an opinion favoring the abolition of the House of



Lords. But with us, the fundamental law can only be overturned or modified by successive votes of numerous bodies composed of members elected at different times and in numerous districts or sections; and hence, if an enemy of the state or nation gets into office, and thus exposes his real character, he is quite sure to be relegated to private life before he has destroyed or permanently injured the perpetuity of the government. And yet, if there is any danger to our republic, it is along these lines; and hence, the same should be counteracted by the restriction of immigration to those who are likely to become American citizens, by educating the rising generations—by social and moral culture—stimulated by the good and patriotic along all the avenues of thought. Of course our fundamental law may be improved by its friends—here a little and there a little—but its enemies should never be allowed to meddle with it. It may be asked, however, is there no work for the reformer? Certainly, there is room for all legitimate reforms. Civilization has not reached its maximum; and society has not reached perfection. Ignorance, avarice, envy, ambition, intemperance, passion, jealousy, brutality, revenge, and the different forms of vice, have not yet ceased to be disturbing elements. Undoubtedly grave wrongs are committed every day in the year and in every state in the Union—not so much for want of laws, as for the want of the prosecution of laws. But the broad discretion vested in legislative bodies enables them, within constitutional limits, to shape all matters of policy—domestic, interstate and international. The broad discretion vested in all executive, administrative and municipal officers furnishes abundant opportunity for experiment and improvement. Such are some of the outlines of that dual system of government known as the American republic; and some of the steps which led to its establishment, and to the completion of its great fundamental charter. It was evolved from the experience of the ages. It was conceived by those who had graduated in the schools of adversity and necessity. It was, under the guidance of Providence, fashioned by the most unselfish, brave, patriotic, magnanimous and wise band of compatriots that ever attempted such an undertaking; and, all things considered, they accomplished their purpose under the most



favorable circumstances. While slavery has always been abhorrent to a very large portion of American citizens, and now, it is hoped, to all, yet in view of the events of the last hundred years it would seem that Providence used the influence of the institution, as he did the influence of wicked rulers in other times and in other countries, to acquire territories for the purpose of ultimately establishing thereon better governments. Thus Florida was acquired from Spain. The great Louisiana purchase was acquired from France, extending, as it did, from the mouth to the source of the Mississippi, and far to the westward. So Texas and California and the vast territories west of the Louisiana purchase and south of what is now Oregon, were obtained. The aggregate area of the territories thus acquired is far greater than the entire dominions of the United States a hundred years ago. Thus, the home missionaries, in the schools of American citizenship and patriotic advancements, have fields for aggressive enterprise, which, otherwise, would never have existed.

But the republic of Grant, Cleveland, Harrison and McKinley is far superior to the republic of Washington, Jackson and Buchanan. Half an hour while waiting alone for a train at midnight and in winter, is long enough. Fifty centuries were none too long for Providence, acting through human agencies, to produce a republic as imperfect as ours was in the beginning, and still another century to produce what we now behold. Attempts to get ahead of Providence are always foolish, and generally end in retrogression rather than advancement. The Jewish king who could not bear the thought of being killed by a woman in battle, foolishly ordered his own death by his own men. It is always dangerous to get in front of God's chariots, or to obstruct his pathway. Napoleon tried it and woke up on St. Helena. Jefferson Davis and his coadjutors attempted the same feat, but the result was failure. All attempts to supplant the individualism, incident to our form of government, by a stupendous paternalism, are but subtle attempts to supplant our democratic republic by a theocratic or imperial monarchy. It may be that in some climates and some nationalities where ignorance is almost universal, mature and healthy men should be treated as babes in

the woods, but in this free land, they should rather be treated as stalwarts on the hills—in the valleys—on the plains—in the mountains. Even the blind may properly be required to go down into the water as a condition of restored sight. The glasses which reveal nothing wrong or bad in this republic may be defective; but the glasses which reveal everything in the government of this country as inferior to the governments of the old world, are not only defective, but inverted. Some kind-hearted, but narrow minded men—like the “worldly” or the so-called “wise men” mentioned by Dickens in *Barnaby Rudge*—make everything they see or hear “reflect the only images their minds contain.” Only three years ago the French Chamber of Deputies declared themselves against a separation of church and state by a vote of 305 to 205; and over the highest court in France is a painting of the Crucifixion. And yet, we are told by Cardinal Gibbons, on his return from his recent European tour, in effect, that he observed an absence of religion in all branches of the French government, while it is present (in spirit if not in form) in all branches of this government; and so he thanks God that “we enjoy in this country the amplest liberty of worship and freedom of conscience.” Providence generally moves along natural, conservative and practical lines. The earthquake and the cyclone—the saving of Jonah and the raising of Lazarus—may be exceptions. Every man should have a firm grasp upon something permanent and above himself, before he attempts to walk on the water. The important question is not how most effectually to govern—control men, but what kind of government will best stimulate men to govern themselves, to develop the largest per cent. of noble manhood—character—the highest type of citizenship. A government should be a sort of moral and intellectual gymnasium, where all may have an opportunity for exercise with the least injury to any and the greatest good to all. The chief glory of the founders of the republic is in the fact that they were willing to coöperate with Providence in the establishment of a national government for national purposes, and, as indicated in James Madison’s letter of submission, to that end yield and forego all minor considerations, even to the extent of allowing to the respective states

the power to continue or abolish slavery. The chief glory of Lincoln's administration consists in the fact that he was at all times controlled by a purpose to coöperate with Providence in saving the Union—as, in effect, expressed in his letter to Horace Greeley, only thirty days before his proclamation of conditional emancipation—his “paramount object” was “to save the Union”—whether his efforts in doing so resulted in saving or destroying slavery. The chief glory of this republic consists in the fact that, in contradistinction to governments of arbitrary will and despotic power, this is a government based upon fundamental and practically unalterable laws, as indicated, wherein no officials, no body of officials, no combination of individuals, are above the laws, but each and all are alike subject and answerable to the laws.

The duration of this dual system of government depends not only upon the wisdom, integrity and virtue of those who make and administer the laws, but in the wisdom, integrity and virtue of those who elect the men who thus make and administer the laws. With a free ballot based on manhood suffrage, with free schools for the children of the rich and poor alike, with all churches and all religious institutions entirely independent and free from governmental control, and yet each and all protected in the free exercise of their legitimate functions by the strong arm of the law, with the freedom of speech and the press guaranteed, subject only to responsibility for abuses, with liberty properly regulated by laws, and the laws impartially enforced without any discrimination, with the common rights of all men equally protected against all encroachments from arbitrary power, with all class distinctions and titles of nobility absolutely prohibited, the American republic must in due time become, if it is not already, the guiding star of the world, and by its benign influence regenerate, reform and transform all other nationalities into its own likeness.

Madison, Wis., February 8, 1898.



## CHAPTER II.

### WAR QUESTIONS.

BY F. C. WINKLER.

It is proposed in this chapter to give a brief survey of the legal history of the state, in so far as war questions, those connected with the causes of the war of the rebellion as well as those which arose in the course of its progress, were concerned.

The earliest of these in point of time, and at the same time the most important, turned upon the fugitive slave law of 1850. Section 2 of article IV. of the constitution of the United States contains the following provision, the only enactment found in the constitution upon the subject:

“No person held to service or labor in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.”

In pursuance of this provision, the Congress of the United States on the 12th of February, 1793, enacted two brief sections; one authorizing the owner of any such person so escaping to arrest him, bring him before a United States judge, or any state judge or magistrate, and prove to his satisfaction, by oral testimony or affidavit, that the person arrested owed service to the claimant under the laws of the state from which he had escaped, whereupon it was made the duty of the judge or magistrate to give a certificate that such proof had been made and this certificate was declared a sufficient warrant for removing the fugitive to the state from which he had fled. The second section provided a penalty of five hundred dollars for knowingly and willfully obstructing the execution of this law, or harboring or concealing the fugitive after notice that he was a fugitive from labor.



The act of September 18th, 1850, one of the famous compromise measures of that year, was intended largely to increase the facilities for reclaiming fugitive slaves and to place the machinery for executing its provisions in the hands of federal officers. It gave exclusive jurisdiction to the judges of the United States courts and to court commissioners appointed by them over all cases arising under the act. It authorized an increase in the number of court commissioners and prescribed the mode of procedure with detail. It provided for a hearing before the judge or court commissioner and made the certificate, if one was granted, conclusive of the right of the claimant and of the fate of the accused. It admitted proof by affidavit on behalf of the claimant, but enacted that "in no trial or hearing under this act shall the testimony of such alleged fugitive be admitted in evidence." It very much increased the penalties and liabilities of persons who might resist the enforcement of the law or harbor or conceal the fugitive. It imposed strenuous duties, under severe penalties for neglect, on the United States marshals requiring them, under circumstances, to call out a posse comitatus to aid in the capture of a fugitive. It provided a fee to the commissioner hearing the case of ten dollars on granting the certificate to the claimant, but gave him five dollars only in case the proof failed to warrant the issuing of a certificate. Features unnecessarily irritating enhanced the unpopularity of an intrinsically distasteful law.

In March, 1854, Joshua Glover, alleged to be a fugitive held to service or labor in the state of Missouri, was arrested at Racine, Wisconsin, by the United States marshal by virtue of a warrant issued by the United States district judge. He was brought to Milwaukee and there lodged in jail pending a hearing. Excitement ran high. A crowd gathered at the jail, broke in the doors, set the alleged fugitive at liberty and he made good his escape. Sherman M. Booth, the editor of a pronounced anti-slavery paper at Milwaukee, had been concerned in the rescue. He was arrested for violation of the act of 1850 in having aided the prisoner to escape, upon a warrant issued by a United States court commissioner. Upon examination he was bound over to the

next term of the United States district court. He gave bail, but his bail surrendered him, and thereupon, by warrant dated May 26th, 1854, the commissioner committed him to the custody of the United States marshal. The next day application was made to the Hon. Abram D. Smith, one of the justices of the supreme court of this state, for a writ of habeas corpus to the marshal of the United States. The writ was allowed. The marshal made return, setting up the warrant in his hands as justification. Mr. Justice Smith discharged the prisoner, giving his reasons in an elaborate opinion in which he held the act of September 18th, 1850, to be unconstitutional. He argued forcibly and insisted with emphasis that the constitutional provision referred to was in the nature of a mandate to the states only and conferred no authority whatever on Congress to legislate upon the subject. The case was taken to the supreme court of the state by certiorari. It was there argued with great thoroughness and ability. Mr. Byron Paine, afterwards one of the justices of the same court, appeared for Mr. Booth. Mr. J. R. Sharpstein, then United States district attorney, and Mr. E. G. Ryan, later chief justice of the court, represented the marshal. The court (then consisting of three judges) affirmed the order discharging the prisoner. The decision was unanimous. The grounds however on which the judges based their conclusions were not the same. The judges were agreed in sustaining the right of the state judge to issue the writ of habeas corpus to the United States marshal, and upon this writ to enquire into and pass upon the sufficiency of a warrant issued by a United States court commissioner. Chief Justice Whiton yielded to the authority of the case of *Prigg vs. Commonwealth of Pennsylvania*, 16 Peters, 640, as establishing the constitutional authority of Congress to legislate upon the subject of reclaiming fugitive slaves, but held the act of 1850 to be unconstitutional on the ground that it attempted to vest judicial power, including the power to pass finally upon the question of liberty of the party claimed, in a court commissioner without constitutional warrant and in violation of the bill of rights. Mr. Justice Smith, while concurring in these criticisms on the law, reiterated his position that Congress was given no right of legislation on the subject,

and that the act was therefore void. Mr. Justice Crawford held the law to be valid and concurred in the judgment only on the ground that the warrant or commitment under which the arrest was justified did not upon its face show a case within that law. For a full report of this interesting case see 3 Wisconsin, 1.

At the July term, 1854, of the United States district court for the district of Wisconsin, Sherman M. Booth and John Rycraft were indicted for aiding the escape of Glover, and warrants were issued from that court for their arrest to answer the indictments. Application was then made by Mr. Booth to the supreme court for a writ of habeas corpus, with allegation that the indictments charged a violation of the fugitive slave law, which was averred to be unconstitutional. This application was unanimously denied by the court. Chief Justice Whiton, delivering the opinion, took a distinction between a warrant of a court commissioner and a warrant issuing from the court upon a case pending therein, holding that in the latter case the granting of the writ would be an unwarranted interference with the jurisdiction of the court in which the indictment is pending. Mr. Justice Smith delivered a concurring opinion, in which he emphasized the time of the application as an objection to granting it, the jurisdictional question not having been first presented to the court in which the indictment was pending. *Ex parte Booth*, 3rd Wisconsin, 145.

Mr. Booth and Mr. Rycraft were thereafter tried in the United States district court and convicted of violation of the "fugitive slave act" and were sentenced to a short imprisonment in the county jail of Milwaukee county. A writ of habeas corpus was now again applied for to the supreme court of the state, upon a petition which was accompanied by a transcript of the record of conviction. The writ was granted. The sheriff of Milwaukee county, as custodian of the jail, made return, and the United States marshal, protesting against the jurisdiction, also made return of the facts and the record. The court entered judgment discharging the prisoners. The question chiefly discussed in the case was that of the power of the state court to enquire into and pass upon the question of jurisdiction of a federal court in a case which the latter had assumed to



adjudicate. Each of the three judges delivered an opinion. Each held to the right of the state court on habeas corpus to pass upon the jurisdiction of the federal court. All concurred, although on varying grounds, that want of jurisdiction appeared on the face of the record. In *re Booth & Rycraft*, 3rd Wis., 144.

To review the judgments discharging the prisoner, writs of error were issued by the supreme court of the United States and duly served. To the first writ, return seems to have been made without attracting special attention. When the writ was served in the second case, the supreme court of the state directed its clerk not to make return to it, taking the position that an appeal or writ of error did not lie from a state court to the supreme court of the United States, and that the act of Congress authorizing the same was unconstitutional. The attorney general of the United States had, however, obtained a transcript of the record from the clerk of the supreme court of Wisconsin, and when it was found that that court persisted in its refusal to allow a return to be made, the cause was docketed on the filing of this transcript in the supreme court of the United States and the cases were argued in due course. The supreme court, by unanimous decision embodied in an able opinion of Chief Justice Taney, reversed the judgment of the supreme court of Wisconsin. The chief justice arraigns the supreme court of the state with severity for the extraordinary assumption of annulling the sentence of the federal court by its decision of the writ of habeas corpus and then denying the right of review to the supreme court of the United States, thus placing the state court in a position of supremacy, the result of which must be that the federal courts must exercise their jurisdiction subject to the supervision, as to jurisdiction, of the local court in every state. The opinion presents a strong argument on the national side of the old controversy relating to the respective rights of the general government and the states, and a lucid exposition of the relations between them.

Several years had elapsed since the decisions of the state court, and when the cases came to that court again its personnel had entirely changed. Luther S. Dixon was chief justice, Orsamus Cole and Byron



Paine, the associates. Of these, the latter had been counsel for Booth, and Mr. Justice Cole had been a member of the court when it refused to make return to the writ of error and had concurred in that action. The cases now (June term, 1859) came in the form of motions to file the mandates of the supreme court of the United States reversing the judgments on the writs of error. Mr. Justice Paine, having been of counsel for Booth, did not sit. Mr. Justice Cole, although delivering no opinion, adhered to the view taken when a return to the writ had been refused. Chief Justice Dixon gave the subject careful and elaborate consideration. In an able argument, he asserted the jurisdiction of the supreme court of the United States to final arbitrament where federal questions are involved and contended that the mandates should be received and heeded. In view of the difference between the two judges who acted in the case, no affirmative action could be had and the motion was denied. *Ableman vs. Booth*, 11 Wis., 498. In March, 1860, Mr. Booth, who, after the decision of the supreme court of the United States, had been re-arrested, made another application for a writ of habeas corpus to our supreme court. This was denied, Mr. Justice Paine not sitting in the case and the chief justice and Mr. Justice Cole being divided in opinion. 11 Wis., (Vilas & Bryant's notes) 555.

Herewith the great judicial controversy, growing out of the fugitive slave law, in which such extreme grounds were taken, came to an end.

Mr. Justice Paine was first elected to the supreme court in 1859. He was elected on a pronounced state rights platform. He had been Mr. Booth's great advocate. After the close of the war he had occasion in several judicial opinions to refer to the subject of these decisions. In *Knorr vs. Home Insurance Co.*, 25 Wis., 143, he delivered a dissenting opinion, holding that the constitution of the United States contained no warrant for acts of Congress giving either appellate jurisdiction from a state court to the supreme court of the United States or the right of removal of suits from state courts to federal courts. He admits in his argument that under his view of the law there is no arbiter to decide between the respective claims of state and national authority; also that there ought to be such an arbiter and that the supreme court

of the United States would seem to be the proper tribunal; but contends that proper construction of the constitution as it stands does not admit of the granting of these powers. In the course of his opinion the learned Judge says:

"I am aware that the idea of state rights is at present exceedingly odious and unpopular. It is branded as a legal and political heresy, and held directly responsible for the attempt at secession with all its disastrous consequences. But the two claims are entirely distinct and dissimilar.

"Secession is revolutionary; state rights not. Secession seeks to withdraw and overthrow the powers admitted to have been delegated to the federal government. State rights makes no such effort. Secession throws off entirely all obligation under the constitution of the United States. State rights throws off none of that obligation, but concedes that that constitution and laws made in pursuance of it are the supreme law of the state, and that it is the sworn duty of its tribunals to regard and enforce them as such. . . .

" . . . These fluctuations in the popular feeling and opinion can have no legitimate influence upon the question of legal interpretation. Nor can they make it true, that, under our system of divided sovereignty, it is not a question of the gravest delicacy and importance, and, at least, of doubt, whether the states, the original sovereignties, hold their reserved powers wholly subject to the judgment of the federal court."

Shortly afterwards an application for a writ of habeas corpus on behalf of a minor, alleged to have been enlisted in the United States army in violation of law, was addressed to the supreme court. Here Mr. Justice Paine delivered the prevailing opinion of the court, Chief Justice Dixon dissenting, to the effect that the court had jurisdiction to enquire into the legality of the petitioner's restraint of liberty. He discusses the decisions in the Booth case, both state and federal, and argues chiefly in favor of initiative jurisdiction, conceding the power of the supreme court of the United States to review a state court decision,

involving a federal question, to be now settled upon authority. In *re Tarble*, 25 Wis., 390.

This well reasoned opinion goes far to convince us that the position of our supreme court in the *Booth* cases would have been far less indefensible if to the assertion of the right to enquire into the jurisdiction of the United States District Court on habeas corpus it had not added the claim that its decision was final and beyond review by the supreme court of the United States, "which," as Mr. Justice Paine concedes, "was, in truth, contrary to the entire current of authority." 25 Wis., 407.

In *re Tarble* was taken to the supreme court of the United States and there reversed, that tribunal laying down the general principle that "whenever any conflict arises between the enactments of the two sovereignties, or in the enforcement of their asserted authorities, those of the national government have supremacy until the validity of the different enactments and authorities are determined by the tribunals of the United States;" and that a state judge has no authority to entertain a writ of habeas corpus "for the discharge of a prisoner held under the authority, or claim and color of authority, of the United States by an officer of that government;" that whenever it appears in such a proceeding, "that the party is held by an officer of the United States under the authority, or claim and color of authority of the United States," the state judge can proceed no further.

Chief Justice Chase dissented, holding fully to the view that a state court has the right to enquire into the jurisdiction of the federal court upon habeas corpus, and to discharge when satisfied that the petitioner for the writ is restrained of his liberty by the sentence of a court without jurisdiction; and that if error is committed in such discharge its remedy is found in the appeal allowed to the supreme court of the United States.

This decision, it is believed, has been unanimously accepted as finally settling the law upon the subject. It doubtless curtails the powers which have generally been exercised on writs of habeas corpus, but this curtailment is held to arise out of the peculiar relations between the state and federal governments and the necessity of a tribunal to deter-



mine the boundary line. A government is necessarily the judge of its own powers and the United States government, being supreme within its limits, must have power to determine those limits.

The state rights agitation over the fugitive slave did not confine itself to the court rooms of Wisconsin. How it invaded politics and dominated the action of parties, it is not within the scope of these pages to trace; but as early as 1857 the legislature took it in hand. It enacted one of the so-called "personal liberty" bills, then quite common in the northern states. This act (chap. 8, approved Feb. 19th, 1857) made it the duty of district attorneys, whenever any inhabitant of the state was arrested or claimed as a fugitive slave, to use all lawful means to protect and defend him and procure his discharge. It provided that the application of any district attorney, stating that a person was arrested and claimed as a fugitive slave, should be sufficient authority to authorize a writ of habeas corpus; that if upon hearing of a writ of habeas corpus the person claimed as a fugitive slave was not discharged, he should have the right to an appeal to the circuit court; that on such appeal either party might have a trial by jury; that the claim of such person being a slave should not be deemed proved except by the testimony of at least two credible witnesses testifying to facts directly tending to establish the truth of such claim; that any person who upon any trial arising under the act should falsely represent or pretend that any person was or is a slave, should pay a fine of one thousand dollars and be imprisoned not less than one year; that on trial of any prosecution arising under the act no deposition should be received as evidence; that no judgment recovered against any person for any neglect or refusal to obey the fugitive slave law of 1850 or any of its provisions should be a lien on any real estate within the state, or should be enforceable by the sale on execution of any real or personal property, but that all such sales should be void. This act remained on our statute books until 1862 when the essential features of it were repealed.

In 1859 the legislature passed and the governor of the state ap-



proved a joint resolution, which, to show the spirit of the times, is here inserted in full.

“Whereas, the supreme court of the United States has assumed appellate jurisdiction in the matter of the petition of Sherman M. Booth for a writ of habeas corpus, presented and prosecuted to final judgment in the supreme court of this state, and has, without process, or any of the forms recognized by law, assumed the power to reverse that judgment in a matter involving the personal liberty of the citizen, asserted by and adjudged to him by the regular course of judicial proceedings upon the great writ of liberty secured to the people of each state by the constitution of the United States:

“And whereas, such assumption of power and authority by the supreme court of the United States, to become the final arbiter of the liberty of the citizen, and to override and nullify the judgments of the state courts, declaration thereof, is in direct conflict with that provision of the constitution of the United States which secures to the people the benefits of the writ of habeas corpus; therefore,

“Resolved, the senate concurring, That we regard the action of the supreme court of the United States, in assuming jurisdiction in the case before mentioned, as an arbitrary act of power, unauthorized by the constitution, and virtually superseding the benefit of the writ of habeas corpus, and prostrating the rights and liberties of the people at the foot of unlimited power.

“Resolved, That this assumption of jurisdiction by the federal judiciary, in the said case, and without process, is an act of undelegated power, and therefore without authority, void, and of no force.

“Resolved, That the government formed by the constitution of the United States was not made the exclusive or final judge of the extent of the powers delegated to itself; but that, as in all other cases of compact among parties having no common judge, each party has an equal right to judge for itself, as well of infractions as of the mode and measure of redress.

“Resolved, That the principle and construction contended for by the party which now rules in the councils of the nation, that the general

government is the exclusive judge of the extent of the powers delegated to it, stop nothing short of despotism, since the discretion of those who administer the government, and not the constitution, would be the measure of their powers; that the several states which formed that instrument, being sovereign and independent, have the unquestionable right to judge of its infraction; and that a positive defiance of those sovereignties, of all unauthorized acts done or attempted to be done under color of that instrument, is the rightful remedy."

The action of the supreme court, thus virulently denounced, was had in pursuance of an act of Congress passed during the first administration of President Washington, and approved by him.

The resolution must, of course, be classed as *brutum fulmen*, and was probably so regarded by many who gave their votes in its support. But it illustrates how little respect was entertained for and accorded to the government of the United States in the days before the war.

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The breaking out of the war in 1861 brought new and often very important questions both to the federal and to state courts.

Probably no war in human history has, in all its phases, been so largely adjudicated upon in courts of justice as the war of the American rebellion. The time was when the very question of whether it was a war or not was disputed in judicial forums; and this question was not finally set at rest until the decision of the celebrated *Prize Cases* by the supreme court of the United States in 1863. (2 Black, 635.) The interesting topic of the federal war decisions is however outside the scope of this paper.

The first two war cases which came to the supreme court of Wisconsin presented questions of the validity of enlistments of minors. Both cases turned upon the construction of statute law. The enlistment of a young man over eighteen years was held valid, while one of a boy less than seventeen, without the consent of parent or guardian and with knowledge of his age on the part of the recruiting officer, was adjudged illegal. *In re Gregg*, 15 Wis., 479; *In re Higgins*, 16 Wis., 351.

The next case presented a question of the highest importance under

the constitution of the United States. It was, whether the writ of habeas corpus can be suspended by the act of the President of the United States. Here was a question of the liberty of the citizen on the one hand, of the power of the government on the other.

The writ of habeas corpus is the recognized means by which one imprisoned, or in any manner deprived of his liberty, may bring the question of the lawfulness of the restraint before a judicial tribunal. Generally speaking, this right should never be denied him. But there may be extraordinary exigencies when considerations of public safety override every private right, and when even a judicial inquiry into the lawfulness of an imprisonment cannot be permitted. All this is recognized by the constitution of the United States in the following provision found in section 9 of article I: "The privilege of the writ of habeas corpus shall not be suspended unless when in case of rebellion or invasion the public safety may require it."

But the question remains, what authority, under the government of the United States, shall determine when and under what circumstances, in case of rebellion or invasion, the public safety requires the suspension of the writ. The general subject of article I of the constitution is legislative. Can any but the legislative power suspend the writ? This was the important point of the Kemp case.

The question was not new. It had arisen almost immediately on the opening of hostilities and had been the subject of a decision by the chief justice of the United States and of much public discussion. In April, 1861, when violent resistance had been offered to the passage of union troops from Philadelphia to Washington, President Lincoln issued a military order, among other things, suspending the writ of habeas corpus along the route of travel through the state of Maryland, which bodies of soldiers hastening to Washington were obliged to take. A month later, one John Merriman, who was enlisting recruits for the rebel army in the city of Baltimore, was arrested by the military authorities and lodged in Fort McHenry. A writ of habeas corpus was issued to General Cadwalader, then in command, by Chief Justice Taney. General Cadwalader made return, stating the treasonable action of



Merriman on account of which he had been arrested and was detained, but declined to produce his person, claiming suspension of the writ under the order of the President. The chief justice issued an ineffectual attachment against General Cadwalader and wrote an elaborate opinion, holding that the President had no authority to suspend the writ, and that in the absence of action by Congress to that effect, disobedience to the writ, under any circumstances, was an unjustifiable infraction of the constitution and the laws of the United States. This led at once to much heated discussion. Mr. Bates, the attorney general of the United States, in an official letter to the President, took the extremely opposite view, holding that the President had the right to suspend the writ in all cases of arrest made by his authority, when, in case of rebellion, the public safety, in his opinion, required it. The administration acted on the advice of the attorney general, and the President, from time to time, made orders for the suspension of the writ applying to different places and circumstances.

In the fall of 1862 the question came up in the state of Wisconsin. There had been forcible resistance to the execution of the conscription law in the county of Ozaukee. A number of persons, among them Nicholas Kemp, were arrested by the military authorities and confined at Camp Randall. A writ of habeas corpus was issued by the supreme court of Wisconsin to Brigadier-General Elliot, commanding the department of the northwest, calling upon him to produce their persons and his warrant for their detention before the court. General Elliot made return, stating the ground of the arrests, claiming a suspension of the writ of habeas corpus under general orders No. 141 issued by the President the 24th of September, 1862, and declining to release the prisoners from military custody. The question of the jurisdiction of the state court to enquire into the lawfulness of an arrest, when the latter is claimed under federal authority, which, as we have seen, was, at a later period, raised and decided in *re Tarble*, was not raised in this case. It turned wholly upon the right of the President to suspend the writ.

The order of the President, referred to, contained the following provisions:



“First: That during the existing insurrection, and as a necessary measure of suppressing the same, all rebels, and insurgents, their aiders and abettors, within the United States, and all persons discouraging volunteer enlistments, resisting militia drafts, or guilty of any disloyal practice affording aid and comfort to rebels against the authority of the United States, shall be subject to martial law, and liable to trial and punishment by court martial or military commissions.

“Second: That the writ of habeas corpus is suspended in respect to all persons arrested, or who are now, or hereafter during the rebellion shall be imprisoned in any fort, camp, arsenal, military prison, or other place of confinement, by any military authority or by sentence of any court martial or military commission.”

The court approached the case with all the care which the question involved demanded. Each of the three judges delivered a separate opinion. It was unanimously decided that the suspension of the writ under section 9 of article I of the constitution was a legislative, not an executive, act; and that it required an act of Congress to give it validity.

A distinction, which is not alluded to, and does not seem to have been recognized, in the decision of Chief Justice Taney in the *Meriman* case, was insisted upon with much force and clearness, between a general suspension, a *de jure* suspension it might be called, of the privilege of the writ, and a *de facto* suspension which necessarily takes place on the actual theater of war and its immediate surroundings, where martial law is declared and rules the hour, with which civil tribunals may not interfere. In the latter case it was admitted that disregard of the writ by a military officer under the authority of the commander in chief of the armies would be justified. But in this case the arrest took place at a great distance from the actual theater of war, in a state where martial law did not exist, where martial law had not superseded the civil authorities, and the judges were unanimous in the opinion that in such a case a suspension of the writ can only be effected by an act of Congress.

Coming from a court of unquestionable loyalty, as well as recog-

nized ability, the decision could not fail to produce a great effect upon the country. It contributed very largely in inducing Congress at its next session to pass an act for the suspension of the writ. In *re Kemp*, 16 Wis., 359.

At the same term of court a question deeply affecting the re-enforcement of the armies at the front came before the supreme court. A draft to fill quotas had been made. The drafted men were in camp. Application was made for a habeas corpus for their release. It was claimed that the draft was "without color of legal authority under any statute or law of this state or of the United States, and altogether arbitrary and unlawful." The case arose before the "enrollment law," being "an act for the enrolling and calling out of the national forces," approved March 3, 1863, had been enacted by Congress; and the question was, whether the then existing laws, which left the enrolling of the militia and enforcing a draft very largely to rules and regulations to be established by the President, were constitutional and sufficient to authorize the draft. By its decision the court unanimously sustained the constitutionality of the law and the validity of the rules and regulations established by the President under it. In *re Griner*, 16 Wis., 423.

In another case heard at the same term of court, the question was, whether an alien, resident in the state of Wisconsin, who had declared his intention to become a citizen of the United States, who was a qualified elector under the laws of the state and who had exercised his right of suffrage, being drafted, could claim exemption from military duty by reason of his alienage. The supreme court held that he could not; that although not a citizen of the United States, he must be regarded as a citizen of the state of Wisconsin, and that while entitled to enjoy its benefits he could not escape the burdens of such citizenship. In *re Wehlitz*, 16 Wis., 448.

It seems like a parody that in a later case, the same court was compelled to decide that while the resident alien, who had simply declared his intention to become a citizen of the United States and was entitled to vote and had voted, was subject to draft, yet his son, who had been brought here in infancy and lived here ever since and had voted, could

not be drafted. . The reason was clear. While he had voted, he was not entitled to vote. His votes were illegal. For this he might have been punished; but under our laws he was an alien and exempt from the duties of citizenship. The case strongly illustrates the crudeness of our naturalization laws. *In re Conway*, 17 Wis., 527.

The case of *Richard Oliver*, 17 Wis., 681, brings us back once more to the question of habeas corpus. Young Oliver, in whose behalf a petition had been presented, had been enlisted in the army. He was less than eighteen years of age. The merits of the application came strictly within the case of *Higgins*, already referred to. But in the meantime the act of Congress, approved March 3d, 1863, authorizing the President of the United States to suspend the writ of habeas corpus, had been passed, and the President, in pursuance of its provisions, had issued his proclamation, dated September 15th, 1863, suspending the privilege of the writ in cases where persons were held under the command of the government as prisoners or as soldiers. It was contended that the act and the proclamation under it were invalid. The argument was, that the suspension of the writ could only be accomplished by a direct act of Congress; that the act in question did not of itself suspend it, but sought to delegate the power of suspension to the President. Mr. Justice Paine, in delivering the opinion of the court, admitted that the wording of the act afforded room for criticism, but concluded that in substance the act itself suspended the privilege of the writ, leaving it to the President to say in what cases the suspension should be insisted on. With this interpretation the act and proclamation were sustained and the writ was refused.

The question of the constitutionality of the act of Congress, making treasury notes of the United States a legal tender in the payment of debts, came before our supreme court at an early date. It was held at the January term of 1864, that the act was valid and applied to pre-existing, as well as subsequently contracted debts. In making this decision our supreme court followed the supreme court and the court of appeals of the state of New York. *Breitenbach vs. Turner*, 18 Wis., 140.



The case of *Brodhead vs. The City of Milwaukee*, 19 Wis., 624, brought a very interesting question before the supreme court. It was as to the constitutionality of an act of the legislature authorizing cities, villages and towns to raise money by taxation for the purpose of paying bounties to volunteers who had enlisted or should enlist so as to fill the quotas assigned to the respective localities under calls by the President for troops. Does the power of municipal taxation extend to such a purpose? That was the chief question involved, although there were minor ones also upon particular features of the law in question. The court sustained the act, and held the tax which had been levied under it valid.

The Ozaukee county draft riots, referred to in the Kemp case, were destined once more to command the attention of our courts. It will be remembered that in the Kemp case it was decided that the suspension of the writ of habeas corpus claimed was illegal. It was also decided that the detention of Kemp as a prisoner in Camp Randall was illegal. The arrests had been made in 1862. The execution of the draft, under the then existing laws, was under the direction of the governor of the state. The honorable Edward Salomon was then governor. After his term of office had expired, John Druecker, one of the prisoners, brought suit against him in the circuit court of Milwaukee county for damages for an unlawful arrest and false imprisonment. It was a test case. The arrests had been quite numerous and if the suit had been successful many others would have followed in its wake. The case came to trial at Milwaukee before the Honorable Arthur MacArthur, circuit judge, and a jury, in October, 1865. The full extent of the riot or insurrection against the enforcement of the laws for the recruitment of our armies, as it was claimed to be, and the necessity of resorting to military force for its suppression, were here first given in evidence. The arrest had been made on the 13th of November, 1862, and it appeared that after being detained for twelve days the plaintiff was delivered to the United States military commander, and that the governor had no control over him after that time. At the end of a long and patient trial, Judge MacArthur, in dignified and manly lan-



guage, taking the form of a charge to the jury, gave his opinion that the plaintiff could not recover. A few extracts from this able opinion may be read with interest.

"When riot is to be subdued," said the learned judge, "the only means at once lawful and imperative, seem in times of quiet unusual and severe. Authority has but one virtue, and that is the promptness and decision with which responsibility is assumed. In such a crisis there is no time to hunt for precedents. Hesitation is synonymous with anarchy. Action is demanded to prevent threatened ruin and bloodshed. So that the appropriate remedies for such an evil belong to that violent class which inflame the system in order to eradicate the disease. Coercion is neither optional nor avoidable. It is the only resource of legitimate authority, and the faithful executive who under such trying and overwhelming necessities is influenced only by considerations of public duty, cannot be followed by vexatious litigation for error of judgment. I have listened with emotion to the impressive and eloquent observations of the distinguished counsel for the plaintiffs (the late Honorable Harlow S. Orton) on the danger of irresponsible power and on the necessity of protecting the citizen from its oppressions. These sentiments are part of our education and habits, and as we are almost the only instance of a powerful government with a well-defined bill of personal liberty, of all others we should be the most anxious to preserve it; and it is gratifying that animated addresses on this subject are always vindicated by the most popular favor and affection of the people. We should not, however, forget that public right and liberty are just as sacred as that claimed for the individual, and when these are threatened with tumult and violence, the magistrate who averts the evil is a public benefactor, and conserves all rights, both of the state and of the citizen, and liberty and law are preserved for the benefit of all alike."

He then points out that in conformity with the act of Congress known as the conscription act of 1862, which, as we have seen, our supreme court had held valid in the Griner case, the President had conferred the duty of enforcing the conscription under it upon the governor

of the state, that actual and threatened violence and armed resistance had justified a resort to military interference, that the arrests and imprisonments in question were made in overcoming the resistance and enforcing the law by military force, and held that for acts thus done in the discharge of duty without malice to the plaintiff, the governor could not be held liable in an action for damages. The case was taken to the supreme court by appeal, and is reported in 21 Wis., 621. The decision of Judge MacArthur was there unanimously affirmed in an elaborate opinion delivered by Mr. Justice Downer.

An interesting case came before our supreme court long after the close of the war involving the question of the suspension of the statutes of limitations in favor of residents of the states in rebellion.

The plaintiff was a resident of New Orleans during the war. In 1873 he brought an action of ejectment for an interest in lands in Wisconsin. A plea of ten years' adverse possession under color of title was sought to be avoided by disability to sue growing out of the state of war. The plaintiff claimed that his disability continued until August 20th, 1866, when the complete suppression of the rebellion and restoration of peace were declared by proclamation issued by President Johnson. It had been so decided in favor of a resident of New Orleans by the supreme court of Indiana. *Perkins vs. Rogers*, 35 Ind., 124.

On the other hand, it was contended that under President Lincoln's proclamation of non-intercourse issued the 13th of July, 1861, which declared certain states, including Louisiana, in insurrection, but in terms excepted from its effect those parts of such states which might be "from time to time occupied and controlled by the forces of the United States," the occupation of the city of New Orleans by General Butler, which became complete on the 6th of May, 1862, removed every disability, or at least, that the further proclamation of the President, dated April 2d, 1863, which expressly excepted the port of New Orleans from the territory in which commerce and intercourse were interdicted, had that effect.

The court in an opinion by Mr. Justice Cole sustained the latter view. *Ahnert vs. Zann*, 40 Wis., 622.

Several other decisions will be noticed in connection with legislation relating to the war.

The legislature of 1861 held its first session amid the rumblings of coming war. By joint resolution, approved January 21st, 1861, it pledged the state to the support of the Union and tendered to the President of the United States "whatever aid in men and money" might be required "to enable him to enforce the laws and uphold the authority of the federal government."

By another joint resolution, approved February 1st, 1861, the legislature endorsed the report of representatives Tappan, of New Hampshire, and Washburne, of Wisconsin, a minority of the congressional committee of thirty-three, to the effect that it be

"Resolved, That the provisions of the constitution are ample for the preservation of the Union and the protection of the material interests of the country; that it needs to be obeyed rather than amended; and that extrication from the present difficulties should be looked for in efforts to protect and preserve the public property and the enforcement of the laws, rather than in new guarantees for particular interests, and concessions to unreasonable demands."

A joint resolution of March 12th, 1861, recognized in the inaugural address of Abraham Lincoln "the words of the true patriot and the sagacious statesman," and pledged "the faith of the people of Wisconsin to aid the President of the United States in carrying out the principles indicated in his inaugural address to the fullest extent, putting into the scale, if need be, 'our lives, our fortunes and our sacred honor.' "

An act was passed and approved April 13th, 1861, that in case a call should be made by the President of the United States upon this state for aid in maintaining the Union and the supremacy of the laws, or to suppress rebellion or insurrection, the governor should "take such measures as in his judgment shall provide in the speediest and most efficient manner for responding to such call," and to that end accept the services of volunteers and supply them with uniforms and necessary equipments, and appropriating one hundred thousand dollars for the purposes of the act. (Chap. 239.)



The legislature, in both branches, had resolved that no business should be done after three o'clock of the 13th of April, and that final adjournment should take place on the 15th. In the meantime Fort Sumter was assailed and surrendered. This induced the continuance of the session for two days, during which the act just referred to was amended by increasing the appropriation from one to two hundred thousand dollars, and also appropriating twenty-five hundred dollars to the governor of the state for his contingent expenses as commander-in-chief. (Chap. 307.)

An act was also passed directing the bank comptroller "for the purpose of sustaining the credit of the banks of the state of Wisconsin, and protecting the people who hold the circulating notes thereof, from the unnecessary loss which would be occasioned by the sacrifice of the state stocks held in trust for the redemption of such circulating notes, in the present unsettled state of national affairs," to suspend all action under existing laws for the sale of securities pledged for the payment of bank notes until the first of December, 1861, and prohibiting notaries public, under severe penalty, from protesting any notes of Wisconsin banks for non-payment prior to that date. (Chap. 308.)

Chapter 309, amended by chapter 7 of the special session, exempted all persons entering the military service, during such service, from all civil process, and required all courts to suspend proceedings in any action against such a person until it should be made to appear that he was no longer in the military service.

This done, the legislature adjourned. But the state of the country became rapidly more alarming and on the 15th of May it met again, under the call of the governor, in extra session. This session was devoted exclusively to war measures, the most important of which will be briefly noted.

By chapter 2, counties, towns, cities and villages were authorized to expend money and to levy taxes to provide for the support of families of volunteers who needed such assistance.

Chapter 4 provided for raising and organizing not to exceed six regiments of infantry, including three already called into service of



the United States; and that in case all six should be called, two additional regiments should be raised as a reserve, and that as often as a call should be made by the general government, the governor should be authorized to accept the services of volunteers to the extent of two regiments in addition to the call, so that a reserve force should be constantly ready. The term of service was to be three years. The details of enlistment, organization, drill and instruction, the purchase and distribution of military stores and supplies were all provided for. The act made an appropriation of one million dollars.

Chapter 5 sharply prohibited the rendering of aid to the rebellion, and directed the seizure of arms and munitions of war intended for rebel use that might be found in the state.

Chapter 6 provided for the procurement, by purchase if necessary, of arms and accoutrements, appropriating fifty thousand dollars.

Chapter 8 added five dollars per month to the pay of enlisted men having families dependent upon them for support.

Chapter 13, the final act, authorized the governor, treasurer and secretary of state to issue bonds and borrow money for the purposes of a war fund to an amount not exceeding one million dollars. All the other acts depended for their practical utility largely upon this. The public credit did not then run high and it was clear that the sale of the bonds would be an impossibility if any doubt of their validity was suffered to remain.

The money was wanted to aid in the suppression of the rebellion,—the rebellion of the southern states against the federal government. There was no invasion, insurrection or war within the borders of the state of Wisconsin. The loans could be contracted only under section 7, article VIII, of the constitution of the state, which authorized the borrowing of money “to repel invasion, suppress insurrection or defend the state in time of war.” There was an obvious question, therefore, whether the insurrection of the southern states brought the situation within the purview of this constitutional provision.

Under these circumstances, the governor appealed to the judges of the supreme court to give him their public opinion of the constitu-

tionality and validity of the law. It was doubtless irregular, and under ordinary circumstances improper, that the judges should give an extra-judicial opinion upon a question which might come before them for adjudication. But the exigency of the crisis was supreme, and the judges addressed the following letter to the governor:

“STATE OF WISCONSIN, SUPREME COURT,

“Clerk’s Office, Madison, June 5th, 1861.

“His Excellency Alex. W. Randall,

“Governor of Wisconsin.

“Sir:—We are in receipt of your communication of the 4th inst. asking our opinion as to the constitutionality of chapter 239 of the general laws of 1861, entitled ‘an act to provide for the defense of the state and to aid in enforcing the laws and maintaining the authority of the federal government,’ and chapter 13, of the extra session held in May, 1861, entitled ‘an act to provide for borrowing money to repel invasion, suppress insurrection and defend the state in time of war,’ and as to whether bonds, issued under the above acts and in conformity to their provisions, would be valid and binding against the state.

“Your excellency is pleased to intimate that it has become a necessity in the present exigencies of the state and country to appeal to us for an opinion upon the above question. Yielding to this emergency, we have felt it to be our duty to give you our opinion upon the question suggested in your communication, and we would therefore state that we have considered the above mentioned laws, and from the examination we have given them we entertain no doubt as to their constitutionality, and we are of the opinion that the bonds issued in conformity to their provisions will be valid and binding upon the state of Wisconsin. Respectfully yours,

“LUTHER S. DIXON, Chief Justice.

“O. COLE, Associate Justice.

“P. S.—Mr. Justice Paine is at present in Milwaukee and has had no opportunity of acting upon the subject matter of your communication.

“O. COLE.”

By the aid of this opinion, the bonds were negotiated and their validity has never been brought in question.

At the regular session of 1862 a number of amendments were passed to the legislation already mentioned. The five dollars extra pay per month to soldiers having families dependent upon them for support was, by chapter 112, approved March 12th, 1862, confined to organizations then already in the field or in process of formation.

An additional bond issue of two hundred thousand dollars for the benefit of the war fund was authorized by chapter 228, and a special fund of twenty thousand dollars was put at the disposal of the governor for the care of the sick and wounded soldiers of the state. (Chapter 371.)

At a special session held in September, 1862, a general act was passed, authorizing counties, towns, cities and villages to raise money to pay bounties to volunteers. (Chapter 13.)

By far the most important act of the legislature of 1862, and one of the most important enacted during the war, was chapter 11 of the special session. It conferred upon the qualified electors of the state, who were in the military service of the United States or of the state, the power to exercise the right of suffrage at the several posts, camps or places where the regiment, battery or company to which the soldier belonged might be on the day of election. The act contained careful provisions guarding such elections in the field and for canvassing and returning the vote. It was passed by the party in power against strenuous opposition. Both its constitutionality and its expediency were strongly questioned. Its constitutionality was tested early in 1863 before the supreme court of the state in an action of quo warranto involving the office of sheriff of Dane county. Its validity was sustained and the "soldiers' vote" thus became established as an important factor in political contests. *State ex rel. Chandler vs. Main*, 16 Wis., 398.

The legislature of 1863 extended the soldiers' right to vote to judicial elections. (Chapter 59.) It authorized an additional issue of bonds to the amount of three hundred and fifty thousand dollars for the war fund. (Chapter 157.) By chapter 196, it appropriated a further sum of fifteen thousand dollars for the care of the sick and wounded soldiers of the state. Chapter 215 authorized the governor to pur-



chase new flags for regiments in the service of the United States from this state, to replace those worn out in the service. By joint resolution number 4, a state flag was formally adopted. This flag had been in use before but without formal action on the part of the legislature. An elaborate act "for the enrollment of persons liable to perform military duty, and the organization of the state militia for active service," was passed. (Chapter 242.) A special tax of two hundred thousand dollars was levied for the "war fund." (Chapter 139.)

In 1864 the legislature authorized a further loan for the benefit of the war fund by the issue of bonds to the amount of three hundred and fifty thousand dollars, redeemable in and after the year 1896. (Chapter 360.) At the same time and for like purposes, a loan of three hundred thousand dollars was authorized upon certificates of indebtedness, bearing interest at the rate of seven per cent. per annum, and payable at the pleasure of the state treasurer on or before six months from the date of issue. (Chapter 361.) A special tax of two hundred thousand dollars for the war fund was also imposed. (Chapter 349.)

By chapter 117 the laws relating to the payment of five dollars extra per month to soldiers having dependent families were revised and consolidated. By this act, all the enlisted or drafted non-commissioned officers, musicians and private soldiers theretofore or thereafter mustered into the military service of the United States or of the state, in pursuance of any law of Congress or of the state, having families dependent on them for support were to receive from the time of being mustered, in addition to the pay provided by the United States, the sum of five dollars per month. Deserters and soldiers dishonorably discharged were excepted. This additional allowance was not paid each month but remained in the state treasury to be paid on such orders as might be drawn in accordance with the law for the support and maintenance of the family of the soldier. The balance remaining was paid to him at the expiration of his term of service. The definition of a "family" within the meaning of the act and the manner of drawing the money were minutely defined in the act. Under this act all Wisconsin soldiers serving in the Wisconsin regiments, who had families dependent upon

them for support, received five dollars per month extra pay throughout their term of service.

A very large number of special laws authorizing bounties in particular localities to be paid to volunteers for enlistment and providing for raising the money by taxation or loans or both, were enacted at this session.

The legislature of 1865, besides enacting numerous special laws for the raising of bounties for volunteers in specific localities, enacted a general law authorizing the qualified electors of each town, city and village in the state to raise by tax such sums of money as might be necessary to pay bounties to volunteers who might have enlisted or should thereafter enlist under the call of the President of the United States, of December 19th, 1864, for three hundred thousand men, and who should thereafter enlist under any further call of the President. This was the act the validity of which was questioned in the case of *Brodhead vs. The City of Milwaukee*, already noticed. (Chapter 14.)

Chapter 179 of 1865, made it the duty of the adjutant-general to compile complete muster and descriptive rolls, with all subsequent information obtainable, pertaining to the military history of each individual member of the several military organizations of the state which were then or might thereafter be in the service of the general government during the rebellion.

Chapter 465 placed the further sum of fifteen thousand dollars at the disposal of the governor for the care of the sick and wounded soldiers of the state.

By chapter 478 large additional financial provision was made for the "war fund." The governor, secretary of state and treasurer were authorized to borrow upon certificates of indebtedness of the state, payable on or before seven months from their date and bearing seven per cent. interest, such sums as they might deem necessary, not exceeding in the aggregate eight hundred and fifty thousand dollars; and a special tax to the same amount, to be levied in the year 1865, was authorized to meet their payment.

A memorial addressed by this legislature to the President of the

United States, not by reason of its importance but for its unique character, may be entitled to notice in this place. It insists "that no proposition for peace should be entertained by the government of the United States other than full submission" on the part of the rebels in arms; and renews the pledge of the state to bear its full share of the burdens and hardships imposed; but finds fault with the distribution of the burdens of recruitment of the armies imposed by the government of the United States, and of the great injustice which has been especially done in the case of the state of Wisconsin. It contains, among others, the following reflection: "Your memorialists are of opinion that General Fry (the provost-marshal-general) has a new arithmetic, the principles of which he alone understands; that by its practical application, when he subtracts the credits which a district is entitled to, from the quota required from such district, such quota is thereby enlarged." The memorialists ask "respectfully, though earnestly" that this weak arithmetician be removed from his present position, and "that the same be given to some person competent to discharge the duties thereof, and who will have some regard for equality and right."

The legislature at this session incorporated the Wisconsin soldiers' home. The original act incorporated fifty ladies, chiefly of Milwaukee, to constitute a body corporate of the name and style of "Wisconsin soldiers' home," to be permanently located at Milwaukee, for the purpose of providing and caring for the sick, wounded and disabled soldiers temporarily sojourning in the state of Wisconsin. This organization, it is well known, raised a large sum of money, which was subsequently turned over to the United States upon the establishment at Milwaukee of the national home for disabled volunteer soldiers.

It has been thus attempted roughly to sketch the most important legislation bearing on the war enacted during the years of its duration. A few acts of subsequent years, of a germane character, remain to be noticed.

Chapter 5 of the laws of 1866 authorized towns, cities and villages to erect monuments to the memory of deceased soldiers of the war. This law is still in force. (Section 937, R. S.)



By chapter 69 of the same year a "Soldiers' orphans' home" was established. It was located at Madison. It was supported by annual appropriations by the state until the year 1876, when by chapter 21 of the laws of that year, its property was turned over to the state university. The trustees of the orphans' home had been authorized, by chapter 72 of the laws of 1874, to find homes for orphans over fourteen years of age outside of the home. For orphans so placed, the state continued to provide through the trustees of the soldiers' orphans' home after the home itself had been discontinued.

In 1887 the legislature, by a series of acts, provided for a separation of indigent soldiers of the late war, and their families, from other poor and indigent persons supported more or less at the public expense. It was made the duty of the several counties to levy a separate tax for the relief of "indigent or needy Union soldiers, sailors and marines, and the indigent or needy wives, widows and minor children of indigent or deceased United States soldiers, sailors or marines;" and three commissioners, of whom at least two were to be honorably discharged soldiers, to be appointed by the county judge, were charged with the disbursement of this fund. Provisions were also made for supporting destitute Union soldiers and their families at the "Wisconsin veterans' home," then recently established under the auspices of the grand army of the republic at Waupaca. (Chapters 513, 518 and 304.)

These enactments have been more or less amended, but in their general scope and spirit remain in full force.

### CHAPTER III.

## JUDGE DOTY'S COURT AND THE LAND TRIBUNAL OF MILWAUKEE.

It is not within the scope of this work to go extensively into pre-territorial judicial history, which consists mainly of the proceedings of military tribunals, trials before justices of the peace in a limited number of places now within the state, and the acts of the judges of the county courts of Brown and Crawford counties, which were organized in 1821, and, later, of the Iowa county court. Concerning all these tribunals and their proceedings there is much more tradition than history. The court presided over by James Duane Doty will be considered as the proper starting point.

In January, 1823, Congress passed an act providing for an additional judge of the territory of Michigan, whose jurisdiction was co-extensive with the counties of Brown, Crawford and Michilimackinac—the two former embracing the territory comprised in the present states of Wisconsin, Iowa, Minnesota, and part of that in the Dakotas. Previous to that time the only separate courts established in that vast expanse of territory were county courts of very limited civil and criminal jurisdiction and justices' courts. All important civil cases and all criminal cases, except for petty offenses, were tried by the supreme court at Detroit. The first judge of this new court was James Duane Doty, appointed by President Monroe in the winter of 1823.

Mr. Doty was born at Salem, Washington county, New York, in 1799. In the year of his appointment as judge he married the eldest daughter of General Collins, of New Hartford, Oneida county, New York. In 1818 Mr. Doty settled at Detroit, and in 1819 became a member of the bar of the supreme court of the territory of Michigan. Subsequently he was secretary of the legislative council and clerk of that court. Soon after his appointment as judge he went to the territory

comprising his district, organized the judiciary and opened court. His first residence in what is now Wisconsin was at Prairie du Chien; he remained there but a short time before removing to Green Bay, where he made his home for twenty years. He discharged his judicial duties until 1837, when he was succeeded by Judge Irvin. Of his record as a judge but little has been written, probably because his subsequent career in the field of politics and as a speculator in lands was the subject of so much discussion that his judicial career was lost sight of.

The law creating the court over which Judge Doty presided did not give the tribunal a name, but he called it the "circuit court of the United States" for each particular county in which it was held. It had concurrent jurisdiction with the county courts in the counties of Michilimackinac, Brown and Crawford, and soon after Iowa county was formed, in that county likewise, and in all civil cases appeals might be taken to it from such courts. The court was vested, within the three counties first named, with the jurisdiction and power possessed by the supreme court of Michigan territory "to the exclusion of the original jurisdiction" of the latter; but the supreme court was to have full power to issue writs of error in all civil cases. The proceedings of the new court in criminal cases were final. One term was required to be held in each county yearly: At Prairie du Chien on the second Monday in May; at Green Bay on the second Monday in June, and at Mackinac on the third Monday in July. Consul W. Butterfield, in an article in vol. 5 of the *Magazine of Western History*, p. 699, says that Judge Doty held his first court in the county of Michilimackinac in July, 1823,\* on his way, really, to Prairie du Chien, where he proposed to live. At this

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\*The writer quoted says that the first term of "Judge Doty's court was begun on the twenty-first. On the next day Rix Robinson and Varnum J. Card were admitted attorneys and counsellors of the court—Henry S. Baird having been admitted, it seems, the day previous, although no mention is made of it on Doty's record, which is before me. Joseph Bailey was appointed prosecuting attorney pro tem. The first case on the docket was Card vs. Eaton and Harmon, on an appeal from the county court. [The dates given above, and those which follow, as to the holding of special and regular terms by Judges Doty and Irvin, of their courts, I have taken from Doty's MS., record.]"



term an Indian named Mat-way-way-go-zhic.<sup>†</sup> was tried for the murder of another Indian named Aish-Kaunz. The persons called as witnesses for the prosecution were all Indians—male and female. The wife of the dead Indian was questioned as to her qualifications to testify in the case. She said she stood in the fear of the Great Spirit. She believed those who are good go to a good place after death, and those who are bad, to a bad place. “If I should tell a lie now before these men (the jury) about this matter I should be punished hereafter—I should go to the bad place.” She was permitted to give evidence. The next person called was an Indian of the male sex. He did not know whether there was a Great Spirit or not. He had never seen him. He did not know him. He did not know where his (the Indian’s) forefathers had gone. He did not see them go anywhere. This “noble red man” was required to stand aside. The father of the dead Indian was now called to the stand. He believed there was a Great Spirit. When he was young he used to pray to him if in trouble or in want; but now he was old, and he did not think it necessary; if he were still young it might be different. “I do not know that there is a good or bad place to which we go after death—I rather think there is neither. I am an old man—many of my friends have died, and if there is any such place I think I should have heard of it from some of them. No one ever came back to tell me.” This Indian was not allowed to testify. Mat-way-way-go-zhic was found not guilty.

The writer in the Magazine of Western History continuing, said: Judge Doty held his next court, beginning on the tenth of May, 1824, in Prairie du Chien. This may be said to have been the first real court ever held within the limits of what is now the state of Wisconsin. County courts, it is true, had been held both at Prairie du Chien and Green Bay, as already stated; but when Judge Doty, at his first term at the former place, declared in open court that judicial proceedings were entirely new to the inhabitants of Crawford county, he simply affirmed what everyone knew was the fact.

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<sup>†</sup>Baird and Card were assigned by the court as attorneys for the defendant.

Joseph Rolette was one of the associate justices of the county court at Prairie du Chien. He did not look kindly upon the proceedings when appeals were taken from his tribunal to the one presided over by Judge Doty. He was not accustomed to have his decisions gainsaid. He waxed wroth, and cursed the new court. He would rather see a band of Winnebagoes in the building then used as a court house "than such a damned court." The result of all this was that his honor, Judge Rolette, was arrested by the sheriff and brought before the "circuit court of the United States for Crawford county"—his honor, Judge Doty, on the bench—to answer for contempt. This cooled the irate associate justice of Crawford county; and he declared he had drank, on the day he had spoken the contemptuous words, "one and a half bottles of wine and brandy"—in short, that he was intoxicated. He was fined ten dollars and costs.

The third session of "Judge Doty's court" was the second regular term in Michilimackinac county. The fourth session was a special term at Green Bay, in Brown county, for the trial of criminal cases only—the first one in that county. It commenced on the 4th of October, 1824. Here the first grand jury in Wisconsin was empaneled. The following account shows the nature of the business before the court at that term and is probably indicative of what was characteristic of other terms of court. There were forty-five indictments found by the grand jury—twenty-eight of which were for illicit cohabitation, the aim being to break up the prevalent custom of taking Indian women as wives of the traders and trappers without the formality of a legal marriage, merely buying them of their fathers, as a canoe or a pony would be bought for a price. At first the inhabitants were disposed to resent this interference with established customs, but they found the suave and courtly judge a man of iron and without fear. They for the most part pleaded guilty, and the judge suspended sentence whenever they consented to legally marry the dusky mothers of their children. One sturdy fellow refused to marry, paid his fine of fifty dollars, and continued to live with his unwed Indian mate. He was again indicted, and the court kindly advised him to marry before the opening of the court next day.

He at first stood out, but appeared in court next morning, presented his marriage certificate and said: "There, I hope the court is satisfied. I have married the squaw."

On the 18th of June, 1828, the jurisdiction of the county courts of Michilimackinac, Brown and Crawford was abolished, and all suits, indictments, recognizances, processes, writs, appeals and all other matters and things whatsoever pending in or returnable thereto were transferred and made returnable to Judge Doty's court. This continued until July 31, 1830, when the jurisdiction of the county courts was restored. On the 2d of April previous Congress changed the place of holding the court presided over by Judge Doty, upon the division of Crawford county, from Prairie du Chien to Mineral Point, the county seat of Iowa county. Courts were thereafter regularly held by Judge Doty, not only at Green Bay, but at Michilimackinac and Mineral Point, until the expiration of his second term, February 1, 1832, when he retired from the bench, and was succeeded by David Irvin, who continued to be judge until the organization of the territory.

In the discharge of his judicial duties and as a speculator in lands Judge Doty had traveled over much of the territory now constituting Wisconsin, and in connection with the former governor of Michigan had bought the land on which the city of Madison is located. By his energy and tact he secured the enactment of a law designating Madison as the capital of the then territory of Wisconsin. In 1838 he was elected delegate to Congress,\* and held that office until 1841, in which year he was appointed by President Tyler as governor of the territory. He served in that capacity about three years. "His administration, owing to local causes, was a stormy one, and the records and press of the period are filled with details of bitter contention."† Soon after the expiration of his service as governor he was a commissioner to treat with the Indian tribes of the northwest, with whom treaties were made.

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\*Judge Doty's right to a seat in Congress was contested by George W. Jones, the sitting delegate, on the ground that the latter's term had not expired. See Strong's History, p. 275.

†Fathers of Wisconsin, p. 72.



In 1846 he represented Winnebago county in the constitutional convention, in which he was chairman of the standing committee on the boundaries and name of the state, and a member of the committee on miscellaneous provisions. "Owing to the bitter memories and jealousies of the period, the part he took in the general proceedings was not especially prominent, yet his minute geographical knowledge and long personal experience from actual travel and investigation rendered his services invaluable to his associates."\* In 1849 Governor Doty was elected to Congress, and in 1851 was re-elected; he "procured by his industry and influence important legislation for the state and his constituency; serving both terms with great honor to himself and to the satisfaction of the people of his district.

"In 1853 he retired to private life, and was recalled by President Lincoln in 1861, first as superintendent of Indian affairs and afterwards as governor of Utah, holding this last position at the time of his death at Salt Lake City, June 13, 1865.

"Governor Doty was what is termed a self-made man. Without the advantages of a collegiate education, yet by constant study and a close observation of men and things, he well supplied its place. His vigorous mind was eminently practical and his reading very extensive, especially in all that related to the government of the country and the history of the northwestern territory.

"Personally he had the advantage of a fine and commanding personal presence; an open, intelligent and pleasing countenance, and a most winning address; and though he had passed nearly all his life on the frontier, he will be long remembered by all who had the pleasure to know him as a gentleman of polished manners and of most courtly and dignified bearing."†

Judge Doty's judicial duties were performed under great difficulties. In 1825, 1826, 1827 and 1828 he and H. S. Baird traveled from Green Bay to Prairie du Chien in a bark canoe by way of the Fox and Wisconsin rivers, their crew being composed of six or seven Canadians or

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\*Fathers of Wisconsin, p. 72.

†The last three paragraphs are from the preface of vol. 1, Pinney's Reports, p. 44.

Indians; the time occupied in making the trip was seven or eight days going and the same in returning. In May, 1829, Judge Doty, M. L. Martin and H. S. Baird went from Green Bay to Prairie du Chien on horseback, taking about seven days for the journey. They were the first party of white men that had accomplished that journey by land.

In those early days the accommodations for holding the court were neither extensive nor elegant. There were no regular court houses or public buildings, and the courts were held in log school houses, where there were such, or in rooms provided for the special occasion, destitute of comfortable seats and other fixtures for the convenience of the court, bar and jurors. In May, 1826, when the term of the court was to be held at Prairie du Chien, the judge, on arriving there, found the town entirely under water, the inundation being caused by the overflowing of the Mississippi and Wisconsin rivers. The troops had abandoned the old fort, and the inhabitants had fled to the high grounds near the bluffs; but two or three houses were occupied, and only the upper stories in those. It will naturally be imagined that under such circumstances the court could not be held. But not so. A large barn situated on dry ground, was selected and fitted up for the accommodation of the court, bar and suitors. The court occupied the extensive threshing floor, about fourteen by thirty-five feet. The jurors occupied the hay and grain mows on either side of the judge. When a jury retired to consider of their verdict they were conducted by an officer to another barn or stable.

The following account of an informal tribunal which served the public most excellently is from chapter 30, vol. 1, History of Milwaukee county, and was written by Joshua Stark. It shows the intelligence, love of order and high sense of right and justice which characterized the early settlers of the region in and about Milwaukee:

Until 1835, the eastern half of what is now the state of Wisconsin was known as Brown county, of which the county seat was Green Bay. In that year that part of Brown county lying south of the present counties of Sheboygan and Fond du Lac, and including an area of more than eighty miles square, was set off by the territorial legislature of

Michigan as "Milwaukee county," with its county seat at the mouth of the Milwaukee river. For judicial purposes, however, this district remained attached to Brown county until after Wisconsin became a separate territory. Milwaukee county at this time was virtually an unbroken wilderness of forest and prairie. The title of the native Indian tribes had just been extinguished by treaty, by the terms of which the territory south and west of the Milwaukee river remained still in their rightful occupation. The lands in that part of the present Milwaukee county, described as townships seven and eight, in range twenty-two, were surveyed in the winter of 1834-35, and were offered for sale in August, 1835, at the government land office in Green Bay. The survey of the rest of the county was begun in the winter of 1835-36, and completed in 1837, but the lands were withheld from sale until February, 1839.

Solomon Juneau had maintained an Indian trading-post on the site of the present city of Milwaukee for several years prior to 1834. The first indications of a permanent settlement of the region manifested themselves in the latter part of the year 1834, when emigrants from the eastern and middle states began to arrive at the post and in its vicinity. Their number increased quite rapidly in 1835, and the land sale of that year found many purchasers eager to invest in and about the future city. Anticipating the speedy organization of the new territory of Wisconsin, and expecting that the lands about the Milwaukee settlement would be at once opened to occupation and purchase, and allured by reports of the extraordinary beauty and fertility of the region and the brilliant prospects of the infant colony at the mouth of the river, emigrants came flocking into the district in 1836 and 1837 in rapidly increasing numbers. Many located in Milwaukee, but the greater number struck out into the forest, and sought to establish by occupation and improvement a certain proprietorship—or priority of right—over portions of the public domain. Controversies, of course, quickly arose among these pioneer settlers. What amount of land each person should be entitled to claim, what improvements must be made to secure his claim, within what time such improvements should be



made and similar questions quickly came up for settlement. Conflicts arose respecting the boundaries of claims, and the possession of claimants was frequently disputed by those desiring to secure their land. Disputes of this sort grew more frequent and serious as people realized that there was neither law nor court to regulate the rights of parties and adjust their differences. There was no statute securing a right of pre-emption. The policy of the government on this question was not yet settled. The lands had not been offered for sale, and were not subject to entry. The settler could not buy until the government chose to sell, and his very occupation meanwhile was unlawful—a trespass upon the public domain of the United States. Congress gave no heed to the appeals of the settlers for an extension of the pre-emption laws of this territory. In this condition of affairs the people of Milwaukee and vicinity proceeded with wise deliberation to provide themselves with a remedy for the evils of lawlessness and violence which threatened them. They met at the court house in Milwaukee, March 13, 1837, and solemnly adopted a code of laws prepared by Byron Kilbourn—one of their number—which assumed in brief and clear terms to define the rights and duties of the settlers upon the public lands and to provide machinery for their adjudication and settlement.

By this code the county of Milwaukee—then including Waukesha county—was divided into precincts, each having its “precinct club.” Committees were appointed by these clubs to hear evidence and decide disputed claims. Aggrieved parties to such disputes were given the right of appeal to a “judiciary committee” of the county which sat in Milwaukee, and whose decision was final. A formal registry of claims was provided for, and Doctor J. A. Lapham—afterward eminent as a scientist—was appointed register, and served as such without charge until after the public land sale in February, 1839, when the settlers had their first opportunity to secure the title to their lands by purchase. Fifteen prominent residents of the county served as the judiciary committee.

Under this code of laws the county was settled and improved without serious trouble. These laws (so called) and the decisions of the

tribunals established by them, were implicitly obeyed, or were enforced with exemplary justice and rigor. Each man holding a certificate of the registry of his claim felt as secure of his homestead as if he had the government patent in his pocket. Under the protection thus afforded, the forests were cleared away, fences were made, cabins, stables, barns and even more stately structures were built; fields were cultivated and considerable progress was made in farming and in many other industrial pursuits, while the settlers were waiting for an opportunity to purchase their lands from the government. As a result, each of the settlers, whose claim was duly registered under the settlers' code, finally secured his land and his improvements without difficulty at the minimum price. In all this the only aid or support given to the pioneers of Milwaukee by legislation or the established courts, was that afforded by an act of the territorial legislature approved January 19, 1838, which gave to any person who might be settled on any of the public lands in the territory, where the same had not been sold by the general government, the same rights of action for the protection of his possession, to the extent of his claim, without proof of actual enclosure, as if he had the title in fee; provided, that such claim should not exceed in number of acres the amount limited to any one person "according to the custom of the neighborhood" in which such land was situated, and should in no case exceed three hundred and twenty acres, and that such claim should be marked out so that its boundaries could be readily traced, and that no person should be entitled to sustain any action for possession of, or injury to, his claim, unless he had actually made an improvement "as required by the custom of the neighborhood" in which his claim was situated.

## CHAPTER IV.

### THE TERRITORIAL SUPREME COURT AND ITS JUDGES.

The territorial government of Wisconsin was established by act of Congress approved April 20, 1836. The territory of Wisconsin embraced within its boundaries all the territory now included in the states of Wisconsin, Iowa and Minnesota, and a part of what was formerly the territory of Dakota. After July 3, 1836, Congress declared that such territory should be separate for the purposes of a temporary government. The judicial power of the territory thus created was vested in a supreme court, district courts, probate courts and justices of the peace. The supreme court consisted of a chief justice and two associate justices. It was provided that a term of court should be held at the seat of the territorial government annually.

The territory was to be divided by the legislative assembly into three judicial districts, in each of which a district court was to be held by one of the judges of the supreme court at such times and places as should be prescribed by law. The jurisdiction of the several courts, both appellate and original, and that of the probate courts and justices of the peace, was to be fixed by law, but the act of Congress provided that the supreme and district courts should possess chancery as well as common law jurisdiction, and that each of the district courts should have and exercise the same jurisdiction as was vested in the circuit and district courts of the United States. Writs of error and appeals from the supreme court were allowed and were to be taken to the supreme court of the United States in the same manner and under the same regulations as from the circuit courts of the United States when the amount in controversy exceeded two thousand dollars. The jurisdiction of justices' courts was limited to cases in which the amount claimed did not exceed fifty dollars, and excluded cases in which the title to land was in dispute. The members of the supreme court were to be appointed



by the President by and with the advice and consent of the senate. Probate judges and justices of the peace were to be appointed by the governor by and with the consent of the council.

The first appointments of judges were Charles Dunn, chief justice; David Irvin and William C. Frazer, associate justices; W. W. Chapman was appointed attorney and Francis Gehon marshal. On the 4th of July, 1836, the governor, secretary and judges took the oath of office at Mineral Point, which event constituted a novel and interesting element in a grand celebration of the national anniversary which was generally participated in by the inhabitants of the lead mine region, of which Mineral Point was then the recognized metropolis.

At the first meeting of the territorial legislature, at Belmont, in what is now La Fayette county, October 25, 1836, the territory was divided into judicial districts, and the judges were assigned thereto. The counties of Crawford and Iowa constituted the first district, with Chief Justice Dunn as judge; the counties of Dubuque and Des Moines the second, with Irvin as judge; the counties of Milwaukee and Brown the third, with Frazer as judge.

The first session of the supreme court of the territory of Wisconsin was held December 8, 1836, in the council chamber of the legislative assembly at Belmont, then in the county of Iowa, now in La Fayette county. The judges present were Charles Dunn, chief justice, and David Irvin, associate judge. The proceedings of the court were confined to its organization, no judicial business being ready. John Catlin was appointed clerk and qualified as such. Justus Deseelhurst was appointed crier. The record expresses that "Hon. David Irvin presented a commission from Andrew Jackson, President of the United States, as one of the associate judges of the supreme court of the territory of Wisconsin, and a certificate of qualification from Henry Dodge, governor of said territory."

Henry S. Baird, Peter Hill Engle, Daniel G. Fenton, James Duane Doty, James B. Dallam, Thomas P. Burnett, William W. Chapman, Lyman J. Daniels, Barlow Shackelford, William W. Gardner, Hans Crocker, Joseph Leas, William Smith, James H. Lockwood, John S.

Horner and James Nagle were admitted as attorneys and counselors of the court.

Henry S. Baird, having been appointed attorney general, took the oath of office and was duly qualified.

D. G. Fenton made a motion that the court appoint Thomas P. Burnett reporter of the court, which motion, after the court had taken a recess, was granted. Thereupon, the court adjourned without day.

The time fixed by law for holding the next term was July 3, 1837, and the place Madison. Two judges of the court not being then in attendance, the court was adjourned until the next day; and because of the absence of a quorum the same course was taken each day until July 8, when an adjournment was taken "until court in course."

The next term was fixed for the third Monday of July (16th day), 1838. At the opening of court Judge William C. Frazer was the only member present, and an adjournment was taken until 3 o'clock p. m., at which hour Judge Dunn appeared and court was opened by Francis Gehon, marshal of the territory. William H. Banks, F. S. Lovell, H. W. Wells, Francis J. Dunn and Jonathan E. Arnold were admitted as attorneys.

The first proceeding in a cause was the entry of a rule in the case of Mau-zau-mon-nee-kah, plaintiff in error, vs. The United States, defendant in error, requiring the former to assign errors on or before the first day of the next term and continuing the cause until that time.

A number of motions were heard and acted upon; three rules were adopted, and the term was adjourned.

At the July term, 1839 (15th day of the month) the court was composed of Charles Dunn, David Irvin and Andrew G. Miller. Numerous motions were made and considered. The first mention of a written opinion being filed in a case is that of Elizabeth Mills vs. United States, on a motion to quash the writ and dismiss the proceedings. This term lasted from the 15th until the 17th of July.

The last session of the territorial supreme court was held August 2, 1847, and the last entry of a cause is in the case of Alexander W. Stow vs. Rufus Parks, which was taken under advisement.

There was no change in the members of the court during the period of its subsequent existence. At the July term, 1839, Simeon Mills was appointed clerk in place of John Catlin, resigned, and La Fayette Kellogg was appointed deputy clerk. At the July term, 1840, Mr. Mills resigned as clerk and Mr. Kellogg was appointed. He held the office until the organization of the state supreme court.

Following are sketches of the lives of Judges Dunn, Irvin and Frazer. A sketch of Judge Miller's life is given in the chapter which treats of the federal courts in Wisconsin and their judges.

#### CHARLES DUNN.

By far the most prominent personality in the legal profession in the western part of Wisconsin during her territorial existence and early statehood was Charles Dunn. He was born December 28, 1799, at Bullitt's Old Lick, Bullitt county, Kentucky, about sixteen miles east of Louisville, and died April 7, 1872, at Mineral Point, Wisconsin. His father, Captain John Dunn, was a salt manufacturer at the Lick and was born in Dublin, Ireland. His mother's maiden name was Amy Burks, of the Burks family of Burks Valley, Virginia. Charles was the oldest of a family of five sons and four daughters, and at the age of about nine years was sent to school at Louisville for about nine years, when he was called home and sent on a business tour to Virginia, Maryland and Washington. On his return home he read law for a short time with Warden Pope, a distinguished lawyer of Louisville, and afterwards he proceeded to Frankfort and continued his law reading for about two years with the eminent John Pope, then secretary of state, and who was the first law professor in the Transylvania university at Lexington.

He then removed to Illinois, and arrived at Kaskaskia, the capital of the state, in May, 1819, where he completed his law studies under the direction of Nathaniel Pope, district judge of the United States for the district of Illinois. In 1820 he was admitted to the bar. He then commenced practice at Jonesboro in Union county, Illinois, and in 1821 married Miss Mary E. Shrader, daughter of Judge Otho Shrader, who had been an United States judge in Missouri territory. Mr. Dunn re-



mained in practice at Jonesboro for several years, and then removed to Golconda, in Pope county. For two sessions he was engrossing clerk of the Illinois house of representatives, and for about five years its chief clerk. In 1829 he was appointed by Gov. Ninian Edwards acting commissioner of the Illinois and Michigan canal, and with his associates, Edmund Roberts and Dr. Jayne, surveyed and plotted the first town of Chicago. In the early part of 1832 Indian troubles commenced and a requisition was made upon the state for troops to engage in service against the native Indians headed by Black Hawk. Three brigades of volunteers responded to the call, and Mr. Dunn entered the service and engaged in the Black Hawk war as captain of a company which he raised in Pope county, where he then resided. His company was assigned to the second regiment, commanded by Colonel John Ewing, attached to the first brigade, commanded by General Alex. Posey. General Posey's command crossed the Rock river at Fort Dixon, and, marching next towards Kellog's grove, received intelligence of a severe conflict between Colonel Dement's spy battalion and the Indian forces under Neopope. After a rapid march General Posey's forces reached the grove and found that Colonel Dement's command had routed the Indians, whereupon they followed the trail of the retreating Indians up Rock river, out of Illinois, and into Wisconsin. Captain Dunn was severely, and it was thought fatally, wounded in what is now called the town of Dunn, in Dane county, by a cowardly sentinel whom he, as officer of the day, was proceeding to relieve. He was taken back to Fort Dixon, where he remained until the close of the war by the battle of Bad Axe.

As soon as he had sufficiently recovered he returned to his home, and in the spring of 1833 acted as assistant paymaster in paying off the first brigade; and during that year resumed the practice of his profession. In 1835 he was elected from Pope county to the house of representatives of the state legislature, and was chairman of the judiciary committee during the session. In the spring of 1836 he was, upon the recommendation of the Illinois delegation in Congress, and the delegate from Wisconsin, George W. Jones, appointed by President Jackson chief

justice of Wisconsin territory. He arrived at Mineral Point on the 4th day of July, 1836, and was then sworn into office, which position he continued to hold until the state judiciary was organized, holding his last term of court under the territorial organization at Mineral Point in October, 1847.

The first term of the supreme court of the territory, as well as its first legislature, convened at Belmont, now in La Fayette county, in the fall of 1836. Judge Dunn about this time took up his residence at Belmont and lived there until his death in the month of April, 1872. The present village of Belmont, on the C., M. & St. P. R. R., is three miles to the southeast of the territorial capital. Leslie station, on the Lancaster and Galena branch of the C. & N. W. R. R., is within a half mile of the site of the old capitol and a little nearer to the Dunn residence. There is not a vestige left of the capitol building; tradition says that its substantial frame was removed to a neighboring farm and was there made over into a barn.

The location is one of great natural beauty. Within a radius of a mile, and directly east from the site, is the Belmont mound. A little south of west and three miles from Belmont mound, stands the Platte mound. These mounds are upon a high plateau, and are both about a half mile in diameter at the base and about five hundred feet high. In the gently undulating prairie country which surrounds them they are very prominent objects, and from their summits can be seen the three states of Wisconsin, Illinois and Iowa. When Judge Dunn made Belmont his residence it was with the hope and expectation that it would be the permanent seat of government of the territory and future state. Madison, the City of the Lakes, soon after won the prize, but Judge Dunn's attachment for Belmont, its natural beauty and quiet, never waned.

Judge Dunn's term of office as territorial chief justice from 1836 until the admission of the state into the Union in 1848, was no sinecure. He not only presided over the appellate court but in addition was *nisi prius* judge of the first district, comprising the present counties of Dane, Green, La Fayette, Grant and Iowa, and all the territory north and

west of the Wisconsin river and east of the Mississippi. These onerous and manifold duties he discharged well and honorably.

He was a member of the last constitutional convention of the state, from La Fayette county. He was president pro tem. of the convention and chairman of the judiciary committee, over which body he exercised a commanding influence. The valuable reservations and provisions of the constitution in the interests of the people were largely the result of his broad, far-seeing mind and absolute integrity. The power reserved to the legislature to alter or repeal the charter of any corporation created by it was his work.

He favored a limitation in the constitution of the right of suffrage to citizens of the United States who had lived in the state one year, only excepting those who resided in the territory at the time of the admission of the state. In the rejection of this proposal he was disappointed. With the experience of the state, it is not certain that at this day his advice would not be followed in that respect.

Judge Dunn was a candidate for the United States senate in the democratic caucus of the first state legislature, but was defeated by General Dodge. This disappointment, with the advent to power soon after of the republican party, terminated his political career. He was not a politician and knew nothing of the methods essential to political success, nor had he a desire to learn them. His manhood revolted against the scheming and trickery of the inveterate office-seeker. He lived and died in the Mississippi valley, never having seen the capitol of the nation, or either ocean which washes the shores of the republic.\*

From the time Wisconsin became a state Judge Dunn lived quietly at Belmont and practiced law, meeting his clients for consultation generally in his country home, and traveling about the circuit in his own conveyance, attending the terms of court in the different counties. It was during this period that the older members of the bar remember him, his associates prior to that time having all passed away. In those

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\*In 1858 Judge Dunn was a candidate for Congress against C. C. Washburn, and in 1869 was induced to accept the democratic nomination for chief justice of the supreme court and became a candidate against Luther S. Dixon. He was defeated in both instances; in the latter the vote was 65,683 for Dunn and 72,470 for Dixon.



days hotel accommodations were limited and inferior. Judge Dunn's room was always the best room in the best hotel of the town where court was in session, and was universal headquarters for members of the bar, no matter how distinguished or humble. Frequently every facility for seating his guests, even to his bed, would be taxed to the utmost capacity, and there the long evenings were spent in social communion, eminently satisfying to all, in which the judge was the principal actor. His hospitality was genuine and unlimited. Every worthy member of the bar had in him a friend. He had no use for the unworthy members of the profession, and they instinctively knew it.

During this period Judge Dunn was employed in many important cases. He commenced very few of them, but was employed to assist at the trial, and no more effective advocate has ever practiced at the Wisconsin bar. He was not demonstrative in argument. His strength consisted in the strength of his own convictions, beyond which he would not go, expressed in a quiet way, in plain but classic diction, and as forcible as language could be made. His character for integrity added force to his arguments with the court or jury. No one could withhold respect for the man. He was well-versed in the principles of the law, and was possessed of a mind preëminently analytical.

While at the bar he paid little attention to the reported cases, never troubling with them except when they were thrust upon his consideration by his opponent. He was a great moral power, untainted with falsehood in any form, and this power was directed by the most undaunted courage. He was universally courteous and considerate in his intercourse with the court and bar. If he had resentment to vent, a keen rapier wielded with a bow did the work more effectually than anger's bludgeon could have done it. The following incident will illustrate:

The judge was the attorney for the husband and defendant in a divorce case in La Fayette county, which excited great public interest and filled the court house with spectators during a trial which consumed nearly two weeks. The sheriff was the late Major Kyle, a prince of good fellows, a great friend of Judge Dunn's, very polite and inclined to gallantry. It was noticed during the trial that whenever the fair plaintiff

and her female friends who attended her came into the crowded court-room the sheriff met them at the door and conducted them through the crowd to seats reserved for them, while the modest defendant was permitted, alone and unaided, to edge his way through the press to the side of his counsel.

This annoyed Judge Dunn, but no one was aware of it until he commenced his plea to the jury. In opening he alluded to the sympathy for the wife which pervaded the court-room and doubtless to some extent affected the jury. "Even," said the judge, "my friend, Major Kyle, has shown himself during this trial to have been affected by this insidious influence, and while the defendant, my client, has been permitted to make his way through the crowded court-room to the side of his counsel, as best he might, the fair plaintiff with her numerous attendants has been met by the gallant sheriff at the door of the court-room, and conducted by him to seats reserved for them, in a manner which seems to say: here comes the distinguished plaintiff and her retinue, make way before them." The jury and spectators appreciated the point, and Major Kyle's pride received a severe blow from which it took him some time to recover.

Personally, Judge Dunn was large and stalwart, capable of great endurance. He was fond of hunting in his early and middle life, when the country abounded in game. The wound he received in the Black Hawk war made him a little lame ever afterwards. His gestures while speaking were very peculiar, consisting exclusively of movements of the hand and forearm, the arm above the elbow remaining stationary.

An inveterate old litigant of Grant county, who knew the judge well and had felt his great power with a jury frequently, said of the judge's only gesture that it reminded him of a "pump-handle." He had, however, the greatest confidence in the "pump-handle" and its worker when enlisted on his side of a case, and the greatest fear of the combination when enlisted on the side of his opponent.

The courage of Judge Dunn was marked. The following incidents as described by the pen of the late Moses M. Strong will illustrate:

"In 1836 an atrocious murder had been perpetrated in Grant county,

and the person charged with the crime committed to jail to await the action of the grand jury. He was brought before Judge Dunn upon a writ of habeas corpus, who, after a full investigation, admitted the prisoner to bail, which he obtained and was set at liberty. The inhabitants in the vicinity of the murder were very much incensed, and assembled in large numbers, with the avowed intention of lynching the accused, who only saved his life by flight. His sureties were also compelled to leave the territory at the hazard of their lives. The mob, in which were some very respectable citizens, also passed a resolution (of which they notified the judge) that if he attempted to hold another term of court in that county, it would be at the risk of his life.

“On the day appointed for the holding of the court, the judge appeared as usual, without guard or escort, as calm and undisturbed as though he was entirely ignorant of the menaces of the mob, many of whom, as he knew, were in attendance, and, without having even spoken to any member of the bar or to the sheriff of the danger with which he was threatened, he took his seat upon the bench, with his accustomed quiet dignity, and ordered the sheriff to open court. It was observed that he took with him to his seat his saddle bags, and placed them immediately by his side. This was his arsenal. The firm, determined and resolute purpose of the judge to hold court at that time and at that place, in despite of all threats of personal violence, was so unmistakably developed in every lineament of his unblanched features that all appearance of mob violence was effectually subdued. The sheriff opened court, and its business proceeded in the usual orderly manner.”

This occurrence brings to mind the case of the prosecution of Vineyard of Grant county, for the killing of Arndt, in the territorial council chamber in Madison, on the 11th day of February, 1842. The quarrel arose over the confirmation by the council of the nomination of one Baker as sheriff of Grant county, made by Governor Doty, which Vineyard opposed and Arndt favored. In the heat of debate Vineyard in effect charged Arndt with falsehood, which charge Arndt, immediately upon the adjournment of the council, demanded Vineyard should retract. This the latter refused to do, and Arndt struck him one or two



blows with his fist. Vineyard thereupon shot Arndt with a pistol, killing him instantly.

The public was intensely excited over the event, which was the more terrible from the fact that Arndt was shot down in the presence of his aged father, who was then visiting him. Prejudice ran very high against Vineyard, and, on the 14th of February, he was expelled from the council by a vote of ten to one. He remained in jail at Madison until the 10th of March, when he was taken before Judge Dunn on a habeas corpus at Mineral Point, when, after a thorough examination of the facts, the judge admitted him to bail in the sum of \$10,000.

Here again Judge Dunn was severely criticized, and Charles Dickens, the novelist, who was then in America, and incidentally engaged in collecting material for his "American Notes," subsequently published, refers to this action of Judge Dunn's as an incident showing the reckless disregard of life in this country. The judge's course was, however, subsequently vindicated by the acquittal of Vineyard by a jury of Green county, where he was tried.

Much has been said about the trial of Vineyard. The sentiment of the time attributed Vineyard's acquittal to the matchless eloquence of his counsel, the late Moses M. Strong, of Mineral Point; and, as in those days the standard of an advocate's moving power was supposed to bear a close relation to the quantity of liquid stimulant imbibed, it was said that Mr. Strong, during his plea to the jury for the accused, frequently regaled himself with whisky diluted with water. A statement of the kind was published in the New York Tribune.

Mr. Strong, however, later in life, when the events of the trial could be dispassionately referred to, repudiated the idea that he addressed the jury while intoxicated to any extent, and stated the fact to be that the result of the trial was brought about in a manner more consistent with the experience of the lawyer of to-day, and much more in keeping with the prevailing characteristics of Mr. Strong, whose indomitable energy and attention to details all who knew him well must acknowledge, and that hard work before the trial rather than stimulant accomplished the result.

Mr. Strong is authority for the statement that his agents, for months before the trial, traversed Green county, adroitly eliciting from different individuals their views as to the degree of personal insult which would justify the taking of life. The information thus obtained enabled Mr. Strong to pass or excuse jurors as the interests of his client required. The population of Green county at that time was less than 1,600, so that the number of qualified jurors in the county did not exceed 300.

In presenting to the supreme court the resolutions adopted at a meeting of the bar of the state, held not long after the death of Judge Dunn, E. G. Ryan (so soon to join his great contemporary) said: "It was Judge Dunn's lot in life to fill many stations—professional and lay, executive, legislative and judicial. So far as I know, or have been able to learn, these sought him rather than he them. He certainly intruded himself into none of them. There was a modesty in the man which was rare in his generation. I think that his own estimate of his powers was below, not above, the estimate of all who knew him well. And he was a thoroughly earnest man. He filled all his offices with a singular fidelity and zeal, as if each in its turn were the chief end of his life. To say that he filled them with ability would be but faint praise. He did not achieve success in them by just escaping failure. He was a faithful officer; his offices were never below him, but he was above them. None of them gave opportunity of showing all he was, of calling out the strength that was in him. They were all respectable, some of them high; but his intellect, his culture, his general capacity towered far above any station he ever occupied. We mourn for the untried powers which die out of the world with the young. Let us mourn for the world when it suffers great powers to die, unused in its service, with the old.

"In his life Judge Dunn saw many men around him reach stations which he did not reach. Some of them rose worthily and usefully. Some rose only to show their unfitness. With like pliancy or like artifice he, too, might have risen where his inferiors rose. But he was above these, and, standing below on the solid level of his own life and character, he ranked the superior of most and the equal of any of his

contemporaries. He might have ennobled many positions filled by them—none of them could have ennobled him.

“His character was solid, strong and resolute, but not stern or harsh. His stronger qualities were softened by great sense of humor and kindness of heart. He was generous and trustful to a fault. His foibles, for, like all born of woman, he had them, all arose from his genial character, the warmth of his heart and the kindness of his temper. Strong in character among the strongest, he was, in carriage and manner, gentle among the gentlest. His culture was of a high order, in and out of his profession. His knowledge of men and things, of the world and its ways, was profound. There were singularly combined in him the sagacity of a man of the world and the personal simplicity of a child. His sense of self-respect was unerring, and never deserted, never betrayed him. It is little to say that he was the soul of honor. He could be nothing that is false or mean. He did not know what treason was. That which he believed, that which he loved, that to which he gave his faith, were parts of himself. He could not desert faith or friend or duty, without betraying his own life. Dishonor in him would have been moral suicide.”

#### DAVID IRVIN.

Judge Irvin succeeded Judge Doty as judge of the new court created by Congress as a part of the judicial system of the territory of Michigan. His birthplace was in Albemarle county, Virginia, about 1794. His parentage was Scotch-Irish, his father being a Presbyterian minister and a teacher of the dead languages. As a practitioner in the Shenandoah valley, Virginia, Mr. Irvin did not meet with marked success. In 1837 President Jackson appointed him as judge of the court mentioned, and subsequently, on the organization of the territory of Wisconsin, appointed him as associate justice of the territorial supreme court. In the preface to vol. I of his reports of that court Mr. Pinney (now justice of the supreme court) says of Judge Irvin: “He was not considered a profound lawyer, but with a strong vein of practical common sense and a natural love of justice, after hearing the arguments and ex-



amining the authorities, he was generally enabled to give correct and satisfactory decisions. He had a retentive memory and was a close and discriminate observer, which enabled him to accumulate a vast stock of information of a practical character and of much minuteness. He had a keen relish for field sports, and felt a particular interest in his horse, his dog and gun.

"He detested all vices, and in that respect was an exemplar worthy of all imitation. For his social virtues he stood high with the bench, the bar and the people. The discharge of his judicial duties always seemed irksome and disagreeable to him, and he passed no more of his time in Wisconsin than was necessary to hold his courts, and was as much a citizen of St. Louis as Madison—of Missouri or Virginia as Wisconsin. He always preferred southern society, and as soon as his term of office was ended he went to St. Louis, where he remained some time, and subsequently went to Texas," where he made large investments in wild cotton lands, which brought him wealth. He continued to reside there during the civil war and supported the Confederate cause. His death occurred June 1, 1872.

Edwin E. Bryant, in his contribution to the Green Bag (vol. 9, page 27) on The Supreme Court of Wisconsin, relates these incidents of Judge Irvin: Among the traditions of Green county, where he sometimes held the term, it is remembered that he would adjourn court at a moment's notice to go shooting chickens. He used to say that "his horse, Pedro, had more sense than any lawyer in his court." He was in the habit of consulting Mr. Whiton before deciding a cause, to get an idea of what the law was. It is recorded that in 1841 he gave the following charge to a jury: "It appears from the evidence that the plaintiff and defendant in this action are brothers-in-law. On the Wabash river, in Indiana, they associated themselves together for the purpose of swindling their neighbors. Not content with that, they got to swindling each other, and I am like the woman who saw her husband and a bear fight. 'Fight husband, fight bear. I don't care which whips.' And, gentlemen of the jury, it is a matter of indifference to me how you bring in your verdict." Five minutes after the jury had retired the sheriff was

instructed to see if they had agreed. Informed that they had not, he immediately ordered in the jury and discharged it.

Another incident of him was told by Andrew E. Elmore, well known in the state for half a century as the "sage of Mukwanago." In a speech in the legislature, to illustrate the uncertainty of the law, he said that he once had a case on trial before Judge Irvin. The case seemed very clear for him, and the jury brought in a verdict in his favor for the amount of the claim. Just then, as the winner of the suit sat in the bar with his counsel, the judge's dog "York" became annoyingly familiar, and he unluckily gave the dog a kick, which caused a yelp to reach the master's ears. The judge's brow instantly grew dark and he set the verdict aside.

#### WILLIAM C. FRAZER.

President Jackson appointed William C. Frazer, of Pennsylvania, an associate justice of the supreme court of the territory on the organization of the latter in 1836. But little is known of the career of Judge Frazer, except that he held that office to the time of his death, which occurred at Milwaukee, October 18, 1838, aged sixty-two years. It is said of him in vol. 1, Pinney's Reports, that "his career in Wisconsin was so brief and unimportant that but little is now remembered of it beyond the anecdotes found in the published collections of the Wisconsin historical society, except that which is in a great degree traditional. The only written opinion given by him in the discharge of his judicial duties, of which there is any trace, will be found in the report of the case of the United States vs. Mau-zau-mau-ne-kah (1 Pin., 124), who was indicted, tried and convicted before him at Green Bay for the murder of Pierre Paquette, the interpreter of the Winnebago nation of Indians.

"At the time of his appointment he was considerably advanced in years, and his intemperate habits rendered him unfit for the position, though it is said he had been a lawyer of average learning and ability."

Strong's Territorial History\* gives a more detailed account of Judge Frazer's first terms of court, and that account varies a little in one par-

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\*Page 249.

ticular from that already quoted: "On the 22d of May (1837) Judge William C. Frazer held at Depere (near Green Bay) his first term of court, which continued until the 30th of May. No civil cases were tried in consequence of the disarrangement of the records and papers. The criminal calendar, however, was generally disposed of." Mention is made of the trial of the Indian before referred to, and of the fact that he was defended by John S. Horner, who was appointed by the court for that purpose. The cases of Amable Carbonno, for the murder of his wife, and of two Indians for the murder of Ellsworth Burnett, were transferred to Milwaukee county for trial. Joseph Dutcher was convicted of burglary and sentenced to seven years' solitary imprisonment in the county jail at hard labor and a fine of one hundred dollars. John O'Donnell was convicted of keeping a disorderly house and selling liquor to an Indian, and was fined fifty dollars for the first offense and one hundred for the second. Judging by newspaper comments, Judge Frazer's first appearance on the bench in Brown county was highly creditable, and in marked contrast with the manner in which his judicial functions were subsequently performed.

"Judge Frazer's first term of court at Milwaukee was held on the 14th of June (1837). The two Menomonee Indians, Ash-e-co-bo-ma and Ash-o-wa, indicted in Brown county for the murder of Ellsworth Burnett, on the bank of Rock river, in the month of November, 1835, were tried. Their trials were separate. The counsel for the prosecution was W. N. Gardner, district attorney, and Hans Crocker; for the defense, H. N. Wells and J. E. Arnold. The jury returned a verdict of guilty against Ash-e-co-bo-ma, the father, who was sentenced to be hung on the first day of September. A nol pros. was entered by the district attorney, by the advice of the court, in the case of the younger Indian.

"Amable Carbonno, indicted for the murder of his wife in Brown county, was so reduced by sickness and long confinement that he had to be brought into court on a bed, in which condition he was tried. The prosecution was conducted by F. Perrin and J. E. Arnold, and the defense by Henry S. Baird. He was found guilty of manslaughter and



sentenced to ten years' imprisonment in the common jail of Brown county and to pay a fine of one thousand dollars. The sentence was superseded by his death, which resulted from his disease within twenty-four hours after the rendition of the verdict."

A fuller account of Judge Frazer's judicial career in Wisconsin than is known to exist elsewhere is given by Joshua Stark in chapter 30, vol. 1, *History of Milwaukee County*: Judge Frazer opened his first term of the district court in Milwaukee county, June 14, 1837. He was a resident of Pennsylvania at the time of his appointment, and never removed to the west. Although a man of fair ability and many years' experience as a lawyer, he had fallen into intemperate habits, and his health, both physical and mental, had become seriously impaired by excesses. He was sixty years old, and nervous, impatient, arbitrary and often harsh, overbearing and offensive in his judicial conduct and in his treatment of the members of the bar. The few lawyers who appeared before the judge at his first term were nearly all young men, but men of unusual ability and preparation for professional life. Leaders among them were Jonathan E. Arnold, of Rhode Island, a graduate of Brown university, and John H. Tweedy, of Massachusetts, who had been graduated from Yale college. Both of these gentlemen had taken up their residence in Milwaukee in 1836. The first term lasted but two weeks. In November, 1837, the second term was held, at which the disagreeable traits and habits of Judge Frazer were so emphasized as to arouse a general feeling of disgust, and to induce the bar and many citizens to exert themselves to secure his removal. A committee was appointed to wait upon him and request his resignation, which he refused in offensive terms. The winter following was spent by the judge at his home in Pennsylvania; but in June, 1838, he reappeared and held the term. Little business was done. There was no confidence in the court or in judicial proceedings as conducted by the presiding judge. In September, 1838, the report became current that Judge Frazer, in a card addressed to the publisher of a Green Bay paper, had announced his intention to resign his office, to take effect October 2d, "according to a determination long since made."

The satisfaction felt and freely expressed by the bar and people of Milwaukee at this welcome news was short-lived. For some reason the judge changed his plans, and on the 14th of October, 1838, returned to the city by steamboat from Buffalo, via Chicago, intending to hold the fall term of the court. The passage had been very rough, and his weak and debilitated frame could not endure the excessive strain of illness and fatigue to which he was exposed. He was taken on shore in a dying condition, and on the 18th of October, 1838, died.

Many stories are told of eccentric orders and judgments of Judge Frazer which, if authentic, would fully justify the charge of gross unfitness for the office he held. The records of the court while he was judge show no trace of these singular proceedings. On the contrary, they indicate a strict regard for judicial forms and proprieties. This is perhaps largely due to the fortunate circumstance that the clerk who kept its records during this time—Mr. Cyrus Hawley—was a man of superior intelligence and carefulness in the discharge of his duties.

A somewhat peculiar judgment entered by Judge Frazer at his first term, in a criminal case, would seem to indicate special solicitude for the rights of the accused. An Indian named "Ash-e-co-bo-ma" was tried for murder, convicted and sentenced by the judge to be executed on the 1st of September, 1837. Ash-e-co-bo-ma and another were next tried for an assault with intent to kill, and both were convicted. Each was sentenced to pay a fine of three hundred dollars and the costs of the prosecution, "and be imprisoned by solitary imprisonment in the common jail of the county of Milwaukee for the full term of five years from this date;" but the judge carefully provided against double punishment by adding as part of the sentence, "The latter sentence to go into effect in the case of Ash-e-co-bo-ma if he is pardoned on the sentence previously pronounced for murder by his excellency, the governor."

The first day's proceedings in Judge Frazer's court included the admission of Henry S. Baird, Hans Crocker, Augustus Story, Marshall M. Strong, Nathaniel F. Hyer, William N. Gardner, John P. Hilton, John H. Tweedy, Rufus Parks, Franklin Perrin, Horatio N. Wells,

Jonathan E. Arnold, John Hustis and William Campbell as attorneys. The grand jury was composed of William A. Prentiss, foreman, Everson P. Maynard, Allen O. T. Breed, Samuel Sanbourn, Benoni W. Finch, Samuel Brown, Samuel Hinman, James H. Rogers, William B. Sheldon, Pleasant Field, James Sanderson, George Bowman, John T. Haight, Calvin Harmon, George S. West, Alamon Sweet, Benjamin H. Edgerton, Henry M. Hubbard, William R. Longstreet.

When the testimony on the trial of Ash-e-co-bo-ma for murder was all in, Judge Frazer took out his watch and, noting time, laid it upon the table, thus addressing the lawyers engaged for the prisoner: "I will give you fifteen minutes each to make your arguments to the jury in this case and no more." Vainly did they protest against such tyranny. Mr. Arnold had hardly entered into the first of his argument when time was called. He and Horatio N. Wells were each allowed ten dollars by the court for defending the case.

During the course of the term the following, in addition to those already mentioned, were admitted as attorneys: Erasmus D. Phillips, William A. Frazer, John Richards, Eliphalet Cramer, Clinton Walworth and Aaron Woodman. With the latter the court had some trouble. On the record on the 20th of June it was "ordered by the court that Aaron Woodman take his seat, and he replied that he would not. Ruled: That he show cause for contempt of court, returnable at ten o'clock to-morrow morning. Service acknowledged by said Woodman in open court."

Upon calling court the next morning the first business was the matter of "contempt;" and Mr. Woodman was called upon to answer. Thereupon a member of the bar arose, and calling attention to a petition held by him, asked leave to read the same, which was granted. The petition was signed by "Rufus Parks, chairman," and "J. E. Arnold, secretary," and read by the former. It expressed that the subscribers, members of the bar of Milwaukee county, believed that the difficulty arose from a misapprehension in the mind of the court, and that the statement of facts, drawn up and unanimously agreed upon at a regular meeting of the bar, at which all the members were present, and which



were given, was, in brief, that the language which the court thought Mr. Woodman had addressed to it was directed to a brother lawyer. The petitioners asked that the offensive words be expunged from the records, and that the rule made in consequence thereof be discharged. This prayer was granted.

The Magazine of Western History (vol. 5, pages 820, 821, 822, 823) is the source of the preceding four paragraphs. The article there published contains the following concerning Judge Frazer's conduct on his first arrival in Milwaukee. "The judge reached Milwaukee in June, 1837, on a Sunday evening, from holding court in Green Bay. He put up at a small hotel then kept by a Mr. Vail. He at once fell in with some old friends, who invited him to a private room for the purpose of having an innocent game of poker. There were in the party, besides Frazer, an United States official connected with the land office, and two or three others. They commenced playing for small sums at first, but increased them as the hours passed. By the dawn of the next morning small sums seemed beneath their notice. The early hours were heralded to them by the ringing of the breakfast bell. The judge made a great many apologies, saying, among other things, that as this was his first appearance in the territory (Milwaukee), and as his court opened at ten o'clock that morning, he must have a little time to prepare a charge to the grand jury. He, therefore, hoped they would excuse him, which the residue of the party did, and he withdrew.

"The court met at the appointed hour, Owen Aldrich acting as sheriff and Cyrus Hawley as clerk. The grand jury was called and the members sworn. The judge, with much dignity, commenced his charge; and seldom, perhaps, was there such a charge given from the bench. After dwelling upon several laws that it was thought necessary and proper to call their attention to, he alluded to the statute against gambling. The English language was too barren to describe his abhorrence of that crime. He said that a gambler was unfit for earth, heaven, or hell, and that 'God Almighty would even shudder at the sight of one.' "

## CHAPTER V.

### THE FIRST STATE SUPREME COURT AND ITS JUDGES.

The constitution provided that, for the term of five years and thereafter until the legislature shall otherwise provide, the judges of the several circuit courts shall be judges of the supreme court, four of whom shall constitute a quorum. That instrument also divided the state into five judicial circuits. The first was composed of the counties of Racine, Walworth, Rock and Green; the second, of the counties of Milwaukee, Waukesha, Jefferson and Dane; the third, of the counties of Washington, Dodge, Columbia, Marquette, Sauk and Portage; the fourth, of the counties of Brown, Manitowoc, Sheboygan, Fond du Lac, Winnebago and Calumet; the fifth, of the counties of Iowa, La Fayette, Grant, Crawford and St. Croix. It was further provided that for each circuit there shall be a judge chosen by the qualified electors therein; that one of said judges shall be designated as chief justice (of the supreme court) in such manner as the legislature shall provide.

Pursuant to the foregoing provisions the first circuit elected Edward V. Whiton judge; the second, Levi Hubbell; the third, Charles H. Larrabee; the fourth, Alexander W. Stow; the fifth, Mortimer M. Jackson. Alexander W. Stow was chosen chief justice by his associates on the organization of the court. Jerome R. Brigham was appointed clerk and David H. Chandler reporter. The judges qualified by taking the oath of office August 28, 1848. After some two and a half years' service Judge Stow left the bench, and was succeeded by Timothy O. Howe, who qualified January 1, 1851, and served until June 1, 1853. On December 11, 1850, Wiram Knowlton, judge of the recently created sixth circuit, took his seat for the first time as a member of the supreme court, though he qualified as circuit judge August 6, 1850. There were no further changes in the personnel of the court,

which went out of existence June 1, 1853. Judge Stow drew the short term, which expired in 1850.

The original supreme court of the state sat for the first time January 8, 1849. There were present Alexander W. Stow, chief justice, M. M. Jackson, Edward V. Whiton and Charles H. Larrabee, associate justices. Jerome R. Brigham is noted on the journal as present in the capacity of clerk. The court was opened by proclamation of Peter W. Matts, sheriff of Dane county. The first act of the court was the adoption of a general rule that all attorneys of the late territorial supreme court should be admitted attorneys of this court on taking the official oath. All other persons entitled to admission, either as attorneys of a circuit or of another state, were to pay an admission fee to the clerk of three dollars.

Those admitted as attorneys on the first day the court sat were Moses M. Strong, Alexander Botkin, Parley Eaton, Alexander L. Collins, Joseph T. Mills, Edward Elderkin, Marshall M. Strong, George W. Lakin, S. S. N. Fuller, Wallace W. Graham, Amzy L. Williams, George Gale, Alfred Brunson, Charles E. Jenkins, J. Gillett Knapp, Ben C. Eastman, Frederick S. Lovell, Charles S. Bristol, Lyman Cowdery, David Agry, James M. Gillett, Jonah Bond, Henry W. Tenney, Montgomery M. Cothren, Robert Robinson, Sydney Sea, William R. Smith, Orsamus Cole, Amos F. Culver, Andrew G. Chatfield, George B. Smith, E. Webster Evans, Abram D. Smith, Samuel Crawford, Francis J. Dunn and John Delany.

The first proceeding in a cause was in the case of Nicholas Flanagan vs. McCoun and Ernest by way of a motion on behalf of the former, by his attorneys, Eaton, Cothren, Culver and Robinson, to compel the clerk of the court of La Fayette county to send up a transcript of the record.

The attorneys who had business before the court on the first day of its sitting were Messrs. Eaton, Cothren, Culver, Robinson, Eastman, Brunson, Lakin, Mills, Lovell, Bond, A. D. Smith, Dunn, Crawford, Evans, Strong.

The first record of a written opinion is in the journal of January 11,



1849, it being stated that in the case of James H. Lockwood vs. Robert Rogers the opinion of the court in writing was delivered by Chief Justice Stow.

A proceeding somewhat out of the usual course was had on January 12, 1849. In the language of the journal: "The Hon. Charles Dunn, late chief justice of the supreme court of the territory of Wisconsin, having taken the official oath, administered by his honor, Chief Justice Stow, is admitted an attorney of this court."

The last sitting of the first supreme court of the state was on the 30th of December, 1852. There were present Whiton, chief justice; Hubbell, Larrabee, Jackson and Knowlton, associate justices.

Following are sketches of the lives of the judges of that court:

#### ALEXANDER W. STOW.

The fourth judicial circuit, comprising the counties of Sheboygan, Manitowoc, Brown, Winnebago, Calumet and Fond du Lac, had for its first judge after the organization of the state Alexander W. Stow, of whom Morgan L. Martin, his lifelong and honored friend, wrote as follows: "Alexander W. Stow was born at Lowville, N. Y.,\* 5th of February, 1805. His father, Silas Stow, was a prominent federalist in the early political struggles of that state, was chief justice of the county court, which made him the associate of the supreme judge at nisi prius, and for one term represented the district in Congress. He was a man of superior ability and culture and possessed a fund of general knowledge which placed him in the front rank of the public men of his day. The son inherited much of the talent of the father. . . . Judge Stow was never a close student, but under the tutelage of his father and the eminent men with whom he was brought into association in early life he became, almost by tuition, an accomplished scholar.

"At the age of sixteen, he was placed at the military academy, where

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\*Reed's Bench and Bar gives Middletown, Connecticut, as the place of Stow's birth, and the time as 1804. Page 50.

he remained only a single year,\* and returned to enter his law office in his native village. In due time he was admitted to practice, and formed a partnership with Hon. Justin Butterfield, late commissioner of the general land office, then residing at Sacketts Harbor. That the superior ability of young Stow was fully appreciated by him may be inferred from a remark of his in 1826, that he 'had never known a man of superior constitutional powers.' A few years of routine practice, during a short respite from which he spent a few months in European travel, bring him to the time of his election as chief justice of our state.

"His eccentricities were many and peculiar. There were some by which his general character was judged of harshly and unfavorably by those little acquainted with him; there were many which should go far to redeem it from reproach. He was peculiarly jealous of the independence of the judiciary, and would only accept a position on the bench under a pledge not to serve a second term. It must be unincumbered by obligations of any character save such as appropriately attached to the office to maintain its dignity and to preserve its purity. If any attempt was made, by solicitation or otherwise, to influence him in the discharge of its duties, the act was indignantly rebuked or summarily punished. He was particularly cautious to avoid any influence of favoritism on the one hand, and equally so that his rulings upon the bench should be free from a taint of prejudice on the other.

"As presiding officer of the supreme court, his highest eulogium may be found in the opinions he pronounced during his short official term. They exhibit great comprehensiveness of thought; are terse, excisive and pungent in diction, and furnish models of judicial composition. The common law is well defined as the common sense of mankind, and

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\*Mr. Reed says that but little can be learned of Stow's early life, excepting that he was a college graduate, after which he traveled extensively in Europe; that he studied law, and after his admission to the bar practiced the profession at Rochester, New York. In 1845 he came to Wisconsin and settled at Fond du Lac, near which city he purchased a farm, but did not become a farmer. His time was divided between Fond du Lac and Milwaukee, at which latter city he had a law office, but not much business. He was never married, and died in Milwaukee, September 14, 1854. There is some difference of opinion as to whether Mr. Stow was married or not; the more charitable view is that he was united by a common law marriage to an Indian.

he imitated the virtues of the most eminent jurists by making it the broad foundation upon which his decisions were uniformly based."

The late Chief Justice Ryan held a more favorable view of Judge Stow's ability than did Mr. Martin. He says that he did not know him before they met in Wisconsin. From thence till the judge's death, the writer is proud to say that they were intimate and fast friends. Knowing the judge, then, in the prime of his professional life, the writer finds it difficult to believe that the late chief justice had not been at some time a close and extensive student. His acquaintance with books, in and out of the line of professional reading, was varied and extensive. He might have been called almost a scholar in general literature, and he most surely was one in professional learning. He was one of the best, if not the very best, common lawyer whom the writer has ever met. He was not one of those to whom the common law was a fragmentary confusion of disjointed rules. He had mastered not only its details, but the history out of which it grew. And his vigorous and broad mind grasped it as a system in its full spirit and comprehended the mutual relations and symmetry of all its parts. He well understood that it is not a mere system of municipal law, but that it is, with all its blemishes, the noblest code of personal rights which the world has ever known; which educates men in free and self-reliant manhood, and which has done more than all written systems or constitutions for the freedom of the nations who are blessed in its possession. Judge Stow was certainly an accomplished common lawyer.

In the learning of modern decisions, the multitudinous reports of the last quarter of a century or more, which perplex too many of us with bewildering variety of rule, Judge Stow could not be said to be a scholar. He was not a case lawyer; but he was a better lawyer than mere case learning can make. The fundamental principles which underlie all sound judicial decisions were familiar to him, and mainly guided his judgments. The common law was his judicial creed. And there is a soundness of judgment, a strength of sense, a massiveness of reasoning, and a manliness of language in his opinions, which are not attained in the study of modern reports; which none of his successors have ex-



celled, if, indeed, any of them have equaled. He held the scales of justice with a strong but nice hand. His opinions are very generally sound in matter and really admirable in manner. He owed this partly to his common law, partly to the strength of his character, and the energy, accuracy and justice of his intellect.

For his character was singularly solid and firm, and his faculties were of high order. There were indeed occasional eccentricities in his thinking as well as in his acting. Making some allowance for these, he was surely a great man intellectually. The writer doubts if he ever knew an abler. His views were always vigorous, often profound, and generally discriminating and just. He was indeed a man of strong prejudices, but these rarely, if ever, influenced him on the bench; never consciously. He loved truth for truth's sake, with intense love. He loved justice for itself, with natural and professional devotion. Many disliked the man, but none ever doubted the judge. He revered the judicial office; and while he held it, he made all men respect it. He had a high sense of judicial dignity and authority; and there was no trifling with the court in which he presided. On the bench he looked what he was, a great judge.

He was strongly opposed, on principle, to elective judiciary. He believed that the system had a tendency to make judges representatives of the popular will. He feared that it had a tendency to make judges court favor on the bench. This led him, when solicited to be a candidate at the first judicial election, to declare that, if elected once, he would not suffer himself to be re-elected. He chose to place the judicial office in his keeping above suspicion. The system was then untried; and he failed to give due consideration to the self-respect and professional pride which raise all fit for office above the mean ambition of keeping it by sinking into unfitness for it. He would have been re-elected after his brief term, but for his own truth to his own promise to himself. That honorable but mistaken pledge cost the state a great judge; how great his short judicial service can only indicate. He is now comparatively unknown and unappreciated. A longer judicial career would undoubtedly have placed him in the front rank of American judges.

With all our boast of the present, judicial eminence is not what it was. And thoughts of him and of those who preceded and followed him in his place in this court, and who honored it as he did, Dunn, Whiton and Dixon, make the present writer feel of himself,

ATTALI,

IGNOTUS HAERES, REGIAM OCCUPAVI.

Judge Stow left the bench after some two and a half years' service; and lived in private some five or six years, never again resuming his profession. He died with the deep respect of the profession throughout the state.

He was not a man of many attachments; but all his affections were faithful and lasting. Those only who knew him well, knew that beneath an outside rarely gentle and often harsh, he had a generous and noble nature, and led a life of genuine kindness and consideration for all whom he honored with his intimacy. He was perhaps deficient in some of the gentler qualities of our nature. But none of his peculiarities arose from mean or false qualities. There was nothing small in his nature. All his eccentricities were excesses of strength. A high integrity pervaded his whole character. He bore to his grave the profound regard of all who were happy enough to know him as he really was. And the present writer gives feeble expression to his sense of Judge Stow's excellence by this crude and hasty reminiscence of a good man and just judge.

Mr. Bryant has collected some anecdotes of Judge Stow which were published in his contribution to the Green Bag, heretofore referred to. The judge was long remembered in Madison, where he presided as chief justice, by his tastes, so strange to the western people. He had acquired in foreign travel the taste for game well "ripened." It was told with disgust that the chief justice required his prairie chickens to hang out of his bedroom window till the legs and bills were green, and the feathers rubbed off by a stroke of the hand, and the odor told of decay before he would allow them to be cooked. He was a proud man and stood upon his dignity. It is told that he had a client, one Captain

B., who had been an officer in the British service, and being a man of wealth, had settled in Wisconsin. He was a little peremptory in his bearing, yet he and Stow were warm friends, and the latter was his trusted counsel. One day Captain B. rode up to the door of Stow's office and, not wishing to dismount, which was something of a task to a man of his bulk and years, he called to Stow through the open door: "Judge Stow, come out here a moment." The lawyer, offended by the brusqueness of manner and dominating air, which had often nettled him before, sung out, "See you d——d first; if you want to see me, come in here." A general substitution of attorney followed this episode.

Another anecdote is told of this jurist. One of his cases decided at the circuit had been reversed by the supreme court, of which he was chief justice. The remittitur confronted him at the circuit, and he was reminded that his decision was reversed. "Then," said he, "I have only one other decision to make, and that is, that the supreme court are consummate blockheads."

#### EDWARD V. WHITON.

Edward Vernon Whiton, distinguished as legislator, constitution framer and jurist, was born June 2, 1805, at South Lee, Berkshire county, Massachusetts. He descended from James Whiton, who came from Hingham England, in 1640, and settled at Hingham, Massachusetts, and whose second son, Joseph, removed to Ashford, Connecticut, in 1730. Edward was the son of Joseph Whiton, who descended from this line, and was born at Middleton. He served under General Gates in the revolutionary war, and settled at South Lee soon after its close. In the war of 1812 he was major-general of one of the divisions called into service to defend Massachusetts from threatened invasion in 1814, and commanded the defenses at Boston. On the restoration of peace he returned to South Lee, and represented the town of Lee nine years in the general court of the commonwealth. He had three sons, all of whom became judges: Joseph Lucas, who settled in Lorraine county, Ohio, and was there the founder of a distinguished family; Daniel Garfield, who resided awhile in Ohio, and then came to Wis-





*E. H. Hunt*



consin, where he died, and Edward Vernon, the subject of this sketch. The latter resided in his native town until he was about thirty years of age, "read law" there and served as librarian of the town library. It is supposed that he here acquired a considerable part of that accurate historical knowledge that he afterwards made such good use of.

In 1835 Mr. Whiton left his native town for the west; he remained in Lorraine county, Ohio, until 1837, when he came to Wisconsin and settled on a tract of prairie land near the present site of Janesville. In his youth he had learned the trade of millwright and carpenter, and it was an easy matter for him to build his own cabin, and afterwards the more pretentious house in which he lived and died. For several years after he became a resident of the territory Mr. Whiton lived alone, his marriage having occurred in 1847.

In 1838 he was elected a member of the territorial house of representatives, though he was, politically, a whig and the prevailing sentiment of his district (Rock and Walworth counties) was democratic. He served during the sessions of 1838, 1839 and 1839-40, and during the last was speaker. He also served as a member of the committee which prepared the statutes of 1839, and superintended the printing thereof. He was twice re-elected to the house, and served during the sessions of 1840-41, 1841-42. In 1842-43, 1843-44, 1845 and 1846 he was a member of the council. In 1847 he was elected a member of the second constitutional convention, and served in that body as a member of the judiciary committee.

In 1848 he was elected judge of the first circuit, composed of the counties of Racine, Rock, Walworth and Green. As circuit judge he became a member of the first supreme court of the state, and served in both capacities until the separate supreme court was organized in 1853, when he was chosen its first chief justice. He was re-elected in 1857 and served until his last sickness, which terminated in his death on the 12th of April, 1859.

All who knew Mr. Whiton concur in giving him the highest praise as a man and an officer; in lauding his character and paying respect to his ability and attainments. He seems to have been a remarkable man,



else he could not have commanded from his associates such tributes as were paid him.

Jonathan E. Arnold, who served with Mr. Whiton as a member of the legislature of 1840-41, said of him: "Were I to name any one sphere of action in his life in which he was most eminently distinguished, and for which he had a peculiar adaptation, I should say that it was as a legislator. His varied information, strict integrity, eminent conservatism and finely balanced mind all combined to make him a ready debater and a high minded and patriotic legislator. But it is useless to name any one sphere when he has filled so ably all the positions which he has ever occupied." One who observed his career in the constitutional convention says that it was "strikingly marked by every characteristic of true greatness. He was profoundly educated, not only in law, but in the minutest details of the history of his country. Possessing a memory of unfailing tenacity, the vast stores of learning he had accumulated were ever at instant command, arranged in logical order, available to illustrate any mooted point, either in law or political science."

Judge Whiton possessed, as a judge, the unbounded confidence of all classes of people. During his service on the bench of the supreme court the case between Bashford and Barstow, involving the right to the office of governor, was determined. The court was then composed of Whiton, Smith and Cole, all republicans. All the material questions raised in favor of Barstow, who was elected as a democrat, held the certificate of election, and was, at the commencement of the proceeding, in possession of the office, were ruled against him. He and his supporters expressed the opinion that the court so ruled on partisan grounds. Public feeling ran high. Men went about the capitol, and even into the court room, armed; arms were stored in the capitol. The statement has recently been publicly made by Judge Cole that but for the implicit confidence which nearly all the people of the state felt in the judicial integrity of Judge Whiton bloodshed would almost certainly have followed the court's decision. The sober second thought of the strongest partisans led to the conviction that Whiton could not, by any possibility, be a party to a judgment rendered on partisan grounds for

partisan ends. Though defeat was bitter, confidence in the integrity of the court, based largely on the estimate entertained of Judge Whiton's character, caused its judgment to be accepted.

The written opinions of Judge Whiton are reported in vol. 3 of Pinney's Reports and vols. 1-8 Wisconsin. These, it has recently been said by Judge Cole, do not fairly represent his powers; he was much stronger in the consultation room than with his pen. Some of his discussions with his judicial associates in the privacy of that room are said to have been very remarkable for their learning and to have disclosed him as a man of extensive powers. It is a cause of profound regret to the editor that Judge Cole's health has not permitted him to carry out his purpose to prepare for this work a sketch of Judge Whiton's life and an estimate of his character. It is enough to give Judge Whiton a high place in the regard of the bar of this generation, at least, to know that that distinguished man holds him in high esteem for his judicial qualities, his learning and private character.

In his sketch on "The Supreme Court of Wisconsin" in the Green Bag, Edwin E. Bryant relates the following anecdotes of Judge Whiton. It is said that his feet were remarkable for their symmetry and smallness; that while he was not handsome in the face, a sad, far-away expression added to the plainness of his features. Isaac Woodle, one of the wits of the bar in those days, said: "If he could have Whiton's feet he would almost be willing to have his head."

It is told that while at the bar and on the circuit after he had one night retired to his bed at the tavern, a man came to his room desirous of having him take a case. The man's grievance was that he had put his horse out to pasture in the field of a neighbor at an agreed price and that a massasauga (rattlesnake) had bitten the horse so that he died. He insisted that the owner of the field was liable for the horse. Wishing to be rid of the fellow, Whiton said: "Can't take your case. I am retained for the snake." He was ever in general company a still, reticent man, apparently absorbed in his own reflections. Once, while dining at a hotel, those sitting beside him began to expatiate upon peat, large beds of which are found in the four-lake country. Some one asked

Whiton, "Judge, what do you think of peat?" "Pete! Pete!" remarked the judge, as if startled from a reverie, "really I don't know him."

#### LEVI HUBBELL.

This gentleman was born at Ballston, New York, April 15, 1808. He finished his general education at Union college, from whence he was graduated in 1827. He had a brother who was a lawyer, and presumably obtained his preliminary legal education under his direction. His first practice was with his brother at Canandaigua, New York. Whether he abandoned the profession for a time is uncertain, but he at least permitted his attention to be divided so far as to become the editor of a newspaper known as the "Ontario Messenger." From 1833 to 1836 he was adjutant-general of his native state, having been originally appointed by Governor Marcy. In the latter year he became a resident of Ithaca, and represented Tompkins county in the popular branch of the legislature in 1841. In 1844 he settled in Milwaukee, and became a member of the firm of Finch & Lynde. In 1848 he was a delegate to the national democratic convention, and supported General Cass as a candidate for President. In the same year he was elected judge of the second circuit, which then comprised the counties of Milwaukee, Waukesha, Jefferson and Dane, and at the expiration of his term was re-elected. By virtue of his circuit judgeship he became one of the justices of the supreme court and so remained until the change in the organization of that body in 1853. In 1850 the justices chose him as chief justice, to succeed Stow, and he served as such until January 3, 1852. In 1856 Judge Hubbell resigned his judicial office and resumed the practice of the law in Milwaukee. In 1863 he was elected to the assembly as a republican from a Milwaukee district and served in the session of 1864. In 1871 he was appointed United States attorney for the eastern district of Wisconsin and served in that capacity until 1875, when he resumed the practice of law. He died in Milwaukee in 1876, having a short time before his death fallen on an icy pavement and broken his leg.

It is said in vol. 3, Pinney's Reports, that "for a period of nearly thirty-five years, during which Judge Hubbell has resided in Wiscon-



sin, he has been one of its most prominent citizens and one of the ablest members of the bar. Judge Hubbell is a ready, eloquent and impressive speaker, and both at the bar and on the bench he has displayed great learning and ability, with marked industry and promptness in the discharge of duty, and his intercourse with those with whom he was brought in contact, whether officially, professionally or socially, has ever been characterized by a courteous, kindly and graceful demeanor, which has secured for him their confidence and respect."

In his article on the supreme court of Wisconsin\* Edwin E. Bryant gives the following account of the attempt to impeach Judge Hubbell: "His career as a judge was stormy. He was a man who made enemies, and an attempted impeachment in 1853 furnished the only trial that has ever taken place in Wisconsin before the senate as the high court of impeachment. He was a prominent democrat, and his party was then in power. He was ambitious, agreeable in manners, and felt and evinced a consciousness of leadership. He gave offense to a prominent jurymen† in a case tried before him, it is told. The jury brought in a verdict of not guilty. The judge, greatly surprised at the verdict, made the remark, 'Gentlemen, may the Lord have mercy on your consciences.' One insulted jurymen then vowed vengeance. Pursuing the track of rumor, he gathered in time a formidable array of material for articles and specifications, which, in the early days of the next session, were formulated upon his complaint in the assembly. The charges, contained in ten articles, each with numerous specifications, ran the whole gamut of official misconduct. The trial began March 23, 1853, and after issue was joined the case was set for trial June 6th, from which date until July 11th, the trial continued. The court of impeachment acquitted him by an overwhelming vote on all the numerous specifications, and the result was a triumphant vindication. Among those who voted for his acquittal were many whose reputation for probity, legal learning and judicial fairness added weight to his acquittal. The evidence, given its worst construction, showed only some indiscretions, which he freely ad-

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\*Vol. 9, The Green Bag.

†William K. Wilson, of Milwaukee.

mitted, in allowing some casual interviews with suitors, which in no wise influenced his adjudication.

“Judge Hubbell had the sympathies of a large portion of the people of the state, especially the people of Milwaukee, during the trial, and his acquittal gave his friends opportunity to manifest their joy at the result. A special train loaded with a committee went out part way to meet him; and on his return to Milwaukee a large throng met him and marched in a triumphant procession through the streets, the like of which that city had never seen. A public reception, then a monster procession to accompany him to his home, made the day one of congratulation and holiday parade.”

#### MORTIMER M. JACKSON.

The birthplace of Judge Mortimer M. Jackson was Rensselaerville, Albany county, New York. He attended the schools there and at Flushing, Long Island, and a collegiate institution in the city of New York, remaining at the latter several years. In the early portion of his life he was employed by a mercantile firm in that city, and was an active member and prominent officer of the Mercantile Library Association. He studied law in the office of an eminent lawyer and advocate, David Graham, Esq., and was admitted to the bar. As early as 1834 he took an active interest in politics as a member of the whig party, and upon the organization of the republican party became a conspicuous member of it, and acted with it so long as he lived. In 1857 Judge Jackson was a candidate for the United States senate, but was defeated by James R. Doolittle.

Mr. Jackson arrived in Wisconsin in 1838; he remained a short time in Milwaukee, but settled at Mineral Point, Iowa county, soon thereafter. The country at and about Mineral Point, at the time he settled there, was the field of extensive lead mining operations, which occasioned much spirited and important litigation, and Judge Jackson soon acquired an extended practice and prominence at the bar. He was a graceful and interesting public speaker, and an active participant in the proceedings of the political conventions of his party. On the 26th day



*Mortimer M. Jackson*





of June, 1841, he was appointed attorney general of Wisconsin territory in place of H. N. Wells, and held the office until January 22, 1846. During that period he conducted many cases of public interest and of great importance in a highly satisfactory and successful manner. Upon the organization of the state government, in consequence of his conspicuous position at the bar, extensive acquaintance, and his high position as a citizen of his part of the state, he was elected the first circuit judge for the fifth judicial circuit, then consisting of the counties of Iowa, La Fayette, Grant, Crawford, and St. Croix (the county of Richland being then attached to Iowa county, the county of Chippewa to the county of Crawford, and the county of La Pointe to the county of St. Croix, for judicial purposes), embracing in territorial extent more than one-third of the state, and in which there was a great amount of judicial business to be transacted, making the position an extremely laborious one, particularly in consequence of the long journeys he was required to take through the sparsely settled wilds of a new country, by the most primitive methods of travel, in order to reach the points where he had to hold court. As circuit judge he was ex-officio one of the judges of the supreme court under its first organization, and upon the expiration of the term of Judge Hubbell as chief justice he was chosen by the judges of that court to fill his place, but declined in favor of Judge Whiton, who was thereupon chosen. He continued to be a circuit judge and one of the judges of the supreme court until the organization of the separate supreme court in June, 1853, when he returned to the practice of his profession; but in consequence of ill health and physical infirmity he was unable to prosecute his professional duties with much vigor or continuity. He discharged the duties of his judicial position with great fidelity and in the most honorable and satisfactory manner. He was dignified, courteous, faithful and impartial. The purity and integrity of his character were beyond question or suspicion of wrong.

In 1858 he became a resident of the city of Madison, and in 1861 he was appointed to the office of the United States consul at Halifax, and held that responsible and important position in the diplomatic service of

the country during the trying and eventful period of the recent civil war, in which his duties were of the most delicate and responsible character. He met the requirements of this new position in his accustomed graceful, dignified and able manner, and was exceedingly popular in this new field of official service, in which he continued the tried and trusted servant of the United States as such consul and as consul-general of the United States for the British maritime provinces, (to which latter position he was promoted in 1880), until 1882, a period of about twenty-one years, when he returned to Madison, where he lived until the time of his death, which occurred October 13, 1889, at the age of seventy-seven years. He had lived a long, useful and blameless life.

By his last will and testament he endowed a chair of instruction in the law school of the Wisconsin university, now known as the Jackson professorship, devoting of his estate the sum of \$20,000 for that purpose; thus in the most graceful and efficient manner linking more completely his memory as a lawyer and judge with the professional and judicial history of the state.

In all his social, personal and official relations Judge Jackson was eminently a polite, courtly, dignified gentleman of the old school, treating at all times his associates and acquaintances with the kindest and most respectful consideration. No one possessed in a more eminent degree the respect and kindly wishes of the people than he, and it is safe to say that at the time of his death he had not one enemy in the world.

Judge J. H. Carpenter said of his friend that "Judge Jackson was a man of remarkable purity of character. In all my intercourse with him, which was almost daily for the last eight years of his life, I never heard from his lips an expression unbecoming to a gentleman, or unfit to be uttered in the presence of refined ladies. His sense of right was very acute. His desire to do right and to deal justly with all was very marked. He would often do more than was required that he might be sure that he had satisfied the full demands of justice and right and fair dealing. He cherished no animosity; seemed to be pleased to hear of the prosperity of men with whom he had not been on friendly terms.



He buried completely every feeling of ill will. He lived, for the last few years of his life that I knew him intimately, the life of a pure, honorable Christian gentleman. He sought to do this and he sought his inspiration from the Book of Books. He believed in the divine guidance and he sought it in humble prayer. He was a good man and a just one. He was proud of his adopted state, and wished to honor it as it had honored him. He wished to do good while he lived, and was desirous that what he left should do good after him."

#### CHARLES H. LARRABEE.

Judge Larrabee was born at Rome, Oneida county, New York, November 9, 1820. His father was Major Charles Larrabee of the United States infantry, who was stationed at Fort Howard at the time of his son's birth. The latter received an academic education at Granville and Springfield in Ohio. He read law with General Samson Mason at Springfield, and was admitted to the bar in September, 1841. He resided in Cincinnati for a time, and, presumably, practiced his profession there. In 1846 he was city attorney of Chicago, and in that year married Minerva Norton. In 1847 he removed to Dodge county, Wisconsin, and in the same year was elected a member of the second constitutional convention. He served in that body upon the committee on general provisions, comprising preamble, boundaries and admission of the state, suffrage and elective franchise, internal improvements, taxation, finance and public debt, militia, eminent domain and property belonging to the state, and the bill of rights. Throughout the convention he took a leading and prominent part in its deliberations. In 1848 he was elected judge of the third circuit, comprising the counties of Washington, Dodge, Columbia, Marquette, Sauk and Portage, as then organized, and re-elected at the expiration of his term, and consequently was a justice of the supreme court until that body was reorganized in 1853. In 1852 he was the democratic candidate for chief justice of the supreme court, provision for the separate organization of which had been made; his competitor was Edward V. Whiton, who was successful.

Judge Larrabee is quoted as saying in a note:\* "To become a candidate for Congress I resigned my seat on the bench at the urgent solicitation of Mr. Douglas, who wanted to show his anti-Lecomptian strength in the northwest, in view of the Charleston convention of 1860. I overcame 2,500 republican majority in the district and was elected by 1,200 majority, but was swept under with Douglas in 1860." The election referred to was to the thirty-sixth Congress. Judge A. Scott Sloan defeated Judge Larrabee for re-election to the thirty-seventh Congress. The latter enlisted as a private in the first Wisconsin regiment, became major in the fifth and colonel of the twenty-fourth, serving on the peninsula under Gen. McClellan and in Tennessee under Rosecrans. In 1864 Judge Larrabee went to the Pacific coast for the benefit of his health, which was restored, and remained there until his death. In 1878 he was elected a member of the convention to frame a constitution for the then anticipated state of Washington. After changing his place of residence a number of times he settled in Southern California. "The public career of Mr. Larrabee, both in Wisconsin and elsewhere, has ever been in the highest degree honorable and useful. He has proved himself a gifted statesman, an able and popular judge, and his military record was in all senses patriotic and noble."† Another writer has said of him: "As a judge, he was prompt and impartial, and his written opinions bear favorable testimony to his learning and ability; he possesses more than ordinary natural ability; is an impressive public speaker; his manners are free, affable and popular, and is zealous as a partisan and warm and devoted in his friendships."‡ Judge Larrabee's published opinions are reported in vols. 2 and 3, Pinney's Reports. His war record is thus sketched by the gifted pen of General Edwin E. Bryant: "When Sumter was fired on he offered his services to Governor Randall. On the 17th of April (1861), he entered in the Horicon company, the speedy enrollment of which he hastened; but before that regiment had mustered he was selected for the place of major in the fifth Wisconsin. In this regiment he served with distinction in the army of the Potomac in the

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\*Reed's Bench and Bar; presumably the note was addressed to Mr. Reed.

†Fathers of Wisconsin, p. 238.

‡Pinney's Reports, p. 618.

Peninsula campaign. He served in General Winfield Scott Hancock's command, who wrote to the secretary of war commending him highly as one 'eminently fitted to command troops,' and recommended him for a brigadier general. He particularly distinguished himself on several occasions, especially at Lewinsville, Lee's Mills, and at the battle of Williamsburg. In the arduous campaign up the Peninsula the major's constitution was much broken. On the 25th of July he was commissioned colonel of the twenty-fourth Wisconsin. He came home and recruited for that regiment in his old district—a portion of the state where was much opposition to the war—and brought in men enough, it was said, for four regiments. He enlisted, as stump speakers to plead for enlistments, old democratic wheel-horses, like Matt. H. Carpenter, Henry L. Palmer and Edward G. Ryan. He served with that regiment for one year, participating in the battles of Perryville and Chaplin Hills with great credit to himself and command. But his health was so shattered by service in the Chickahominy swamps that he was compelled to resign. He left the service with high commendations from General Rosecrans, General Philip H. Sheridan and other commanders under whom he served."

Judge Larrabee came to his death January 20, 1883, being one of sixteen persons killed or burned to death by the plunging of a train down an embankment after it had run about four miles down a steep grade. He was returning to his home from a visit to San Francisco at the time.

#### WIRAM KNOWLTON.

Wiram Knowlton was born in Chenango county, New York, January 24, 1816. He became a resident of Wisconsin in 1837, his father's family locating at Janesville, and read law with Parley Eaton, of Mineral Point. His first practice was at Platteville, Grant county, whence he removed to Prairie du Chien. While there he became captain of a company he raised for service in the Mexican war, but which was assigned to duty at Fort Winnebago. In 1850 the legislature created the sixth judicial circuit out of the then counties of Crawford, Bad Axe, St. Croix



and La Pointe. The election for circuit judge was held on the first Monday of July, and Mr. Knowlton was chosen. He served the full term of six years, and until the separate organization of the supreme court in 1853 was a member of that tribunal. His opinions are reported in vol. 3, Pinney, and are indicative of at least average ability. One of the most important of them is that in *Oshoga vs. State*, p. 56, in which it was ruled that a grand jury might lawfully be summoned at an extra jury term of the court appointed under the statute. The validity of an indictment found by a grand jury impaneled at such a term was questioned by Messrs. Cole and Biddlecome. The order appointing the term and directing the venire for a grand jury was made by Judge Knowlton, whose vote in the supreme court was necessary to the affirmance of the judgment, Judges Larrabee and Whiton holding that the court had no power to direct the summoning of a grand jury at an extra jury term. The propriety of Judge Knowlton's sitting in that case appears not to have been questioned, but inasmuch as the defendant had been convicted of murder, it may be doubted whether it would not have been more in accordance with the fitness of things if he had not done so.

Judge Knowlton died at the age of forty-seven, on June 27, 1863, at Menekaune, Oconto county, Wisconsin. There seems to be little known of him from 1856 to that time, except that he practiced law for a short period at Prairie du Chien. It is said of him in the sketch of his life in vol. 3, Pinney's Reports, that "he was a man of good natural talents and discharged the duties of his office with commendable ability; and his judicial integrity was unquestioned." Moses M. Strong has said, in his biographical sketches of deceased members of the bar, that "Judge Knowlton was not a great lawyer, but a good man, and of unswerving integrity and a large share of common sense, and as a judge was very acceptable to those men interested in the discharge of his duties. He was afflicted with the unfortunate habit of the intemperate use of intoxicating drinks, but had the faculty of discriminating between those which were adulterated and the pure. In a suit before him in St. Croix county to recover for a bill of adulterated liquors he charged

the jury that 'pure liquor was a wholesome beverage, promotive of longevity,' but that no man could ever recover judgment in his court. for the sale of adulterated and poisonous liquors."

### TIMOTHY OTIS HOWE.

The basis of the enviable fame connected with the name and memory of Timothy O. Howe is political rather than judicial. For long years he stood the idol of his party in Wisconsin and the object of the respect of all the people of the state. Indeed, his fame was national. His ability as a lawyer and judge has been obscured by the lasting success won by him in the political world.

Mr. Howe was born in Livermore, Maine, February 24, 1816. His father practiced medicine in a rural district. Besides such advantages as the common schools afforded, he spent some time at a grammar school; at eighteen attended the Maine Wesleyan seminary, and at twenty was prepared for college. His hope for a collegiate education was not realized. Instead of going to college he began to read law, and at the age of twenty-three located at Readfield, Vermont, for the purpose of practicing his profession. Among those then there and practicing law was Lot. M. Morrill, afterward Mr. Howe's compeer in the senate. Presumably his experience as a young lawyer was much the same as that of those who enter the profession in these days. In 1842 he was an unsuccessful candidate for the nomination for the office of clerk of the court of the county of his residence, and in 1843, though nominated for that office, was unsuccessful. In 1845 he was elected a member of the popular branch of the legislature as a whig. It is said that he there "took a prominent part as a debater beside the late William Pitt Fessenden, the recognized leader of the house."

In 1845 he came to Wisconsin, settling at Green Bay, where he opened a law office, and ever after resided. In 1848 he was the whig candidate for Congress, but failed of election. In 1850 he was elected judge of the fourth circuit, and in January, 1851, took his seat as a justice of the supreme court, and acted in that capacity until 1853. He resigned his seat on the circuit bench in 1855, and resumed the practice

of the law which he continued till 1861, when he was chosen United States senator. In 1855 he made an excellent reputation as a "stump speaker" for the newly-organized republican party; and in 1856 added largely to his reputation as a lawyer by his argument in the case involving the right of the respective contestants before the people to the office of governor. The fact that he was retained in that case, which called forth the best efforts of J. E. Arnold, H. S. Orton, M. H. Carpenter, J. H. Knowlton and E. G. Ryan, closes the door to any question of his professional standing. Mr. Howe might have been elected to the senate of the United States in 1857 but for the fact that he had taken strong ground in opposition to the states' rights views which were then predominant in the republican party; but he preferred defeat to any modification of his opinions, and saw himself fully vindicated by the acceptance of his views a little later. He was re-elected to the senate in 1867 and again in 1873, each time without the formality of a caucus. At the end of eighteen years of service in that body he was defeated by Matt. H. Carpenter in 1879. Mr. Howe's other public services included a commissionership for the purchase of the Black Hills territory from the Indians, membership in the international monetary conference held in Paris in 1881, and a seat in the cabinet of President Arthur, as post-master-general, which he took in January, 1882. His death occurred March 25, 1883. It was generally understood that during the second presidential term of General Grant Judge Howe was tendered the appointment of chief justice of the supreme court of the United States, that he put aside the honor because the legislature of his state was democratic, and his successor would therefore be of that faith.



## CHAPTER VI.

### THE SEPARATE SUPREME COURT AND ITS JUDGES.

The constitution as adopted in 1848 authorized the legislature, after the expiration of five years, to provide by law for the organization of a separate supreme court, to consist of one chief justice and two associate justices, to be elected by the qualified electors of the state at such time and in such manner as the legislature may provide; and that the separate supreme court, when so organized, shall not be changed or discontinued by the legislature. The term of office was fixed at six years.

Pursuant to this power the legislature of 1852 provided by law that an election should be held on the last Monday of September of that year to choose one chief justice and two associate justices; that the terms of office of the persons elected should commence June 1, 1853; that the term of the chief justice should expire with the last day of May, 1857; that the term of one of the associate justices should expire on the last day of May, 1855, and of the other associate justice on the same day in 1859; that it was to be decided by lot between the two associate justices whose term of office should first expire. The salary was fixed at two thousand dollars per year.

The election resulted in the choice of Edward V. Whiton as chief justice, and Abram D. Smith and Samuel Crawford as associate justices. The latter drew the short term. These gentlemen qualified June 1, 1853. The same day La Fayette Kellogg was appointed clerk; his service in that capacity continued until June, 1878.

The first session of the court was held June 21, 1853. There were admitted to its bar on that day R. N. Messenger, Allison Lewis, A. W. Farr, J. B. Jilsun, A. R. R. Butler, James H. Howe, Jacob J. Enos, A. Cook, O. B. Messenger, I. Woodle, J. R. Sharpstein, E. B. Bowen, H. K. Whiton and R. K. Knight. The first proceeding in a cause was in the form of a motion by F. Randall for a continuance.

On the 6th of July, 1853, the court made an order appointing Ed-

ward G. Ryan its reporter. That gentleman seems not to have accepted the office. This fact explains what Judge Smith says in the preface to the first volume of the Wisconsin reports: "At the commencement of the functions of the separate supreme court provision was made by appointment for full and accurate reports of its decisions. Up to the close of the June term (or very nearly to its close) it was confidently expected that such arrangement would be carried out. But, unfortunately for the profession, the expectations founded upon such arrangement were disappointed, and, at the close of the term, the court found itself without a reporter." The order appointing Mr. Ryan was revoked September 29, 1853. Judge Smith was thereafter appointed reporter.

Judge Crawford sat as a member of the court the last time May 31, 1855, and Judge Cole, chosen his successor, occupied a seat on the bench for the first time June 19, 1855, the opening of the June term. This was the first change in the personnel of the court since its organization. A sketch of Judge Whiton has been given in a preceding chapter. Sketches of Judges Crawford, Smith and Cole and their successors follow:

#### SAMUEL CRAWFORD.

Mr. Crawford was a native of Ireland, having been born in Baltibay, county Monahan, April 11, 1820. His education was received in his native land and is said to have been an excellent one. The exact date of his arrival in this country is not stated, but it is said that he entered upon the study of law and pursued it one year at Warwick, Orange county, New York, and came to Galena, Ill., in 1841, where he finished his reading. He was admitted to the bar in 1844, and began practicing at New Diggings, Wisconsin, not far from Galena. It is said of him that his habits were most exemplary for that region of wild life, where was plenty of money and little of civilization, and that he soon became prominent. He distinguished himself in several important trials, and his fame spread throughout the mining region. He had the bearing of a high-spirited, cultured gentleman, and a manner which, while somewhat imperious and masterful, was fascinating, and he soon became popular. He was an able politician and a graceful and eloquent

speaker. He had no little dramatic power, and, in his earlier days, would bear a part in a play with great adaptation. The theatrical troupes in those days thronged to New Diggings, sure of good houses and appreciative audiences. Crawford sometimes took a part, and when Joe Jefferson was there in his youth the young lawyer gave him advice as to his acting and how to reform it.

Mr. Crawford did not remain at New Diggings long, but removed to Mineral Point, and became a member of the firm of Dunn & Crawford, the senior being Francis J. Dunn. Their business, already large, became more extensive. In 1852 Mr. Crawford was elected an associate justice of the supreme court, and drew the short or two-year term. His views as expressed in his opinions in the cases arising out of the fugitive slave law were not in accord with the rapidly rising tide of anti-slavery feeling, and at the expiration of his term he failed of election, Orsamus Cole being chosen his successor. On his retirement from the bench he returned to Mineral Point, and, except for a brief period of residence at Madison, continued in practice there until 1861, in which year he died, on the 28th of February. His political ambition was never fully gratified, he having been an unsuccessful candidate for Congress against C. C. Washburn in 1856 and for attorney general in 1859.

"He was an able and gifted man, highly esteemed in his time, evincing always the high spirit, courtesy, dignity and hospitality of the higher classes of his nationality. His written opinions show a cultivated and trained mind. . . . With small allowance for the convivial frailties that were too common in his time and in that region, he was an ornament to the bench and bar during the period of his activity, and his untimely death was mourned throughout the state."\*

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\*Edwin E. Bryant, in *The Green Bag*, vol. 9, p. 114.

A correspondent writes the editor that when Mr. Crawford settled at New Diggings he was a pompous freshman recently from college and law school. He was a delightful conversationalist, using the choicest and most felicitous language. He read his Bible and prayer-book, and was, in the language of the miners, "too nice for these diggings." He was a thorough gentleman. Though kind and polite to the rough element, he never chose ill-bred people for his companions. Mr. Crawford was rather a polished than a forceful speaker. His legal attainments were of a high order.



## ABRAM D. SMITH.

Mr. Smith was elected an associate justice of the supreme court on the last Monday of September, 1852. But little is known of his early life. He was born in Lowville, Lewis county, New York, but at what time is not stated. The nature and extent of his early education are matters of uncertainty. He came to Wisconsin in 1842 and located in Milwaukee, where he entered upon the practice of his profession. In 1847 he was defeated by Rufus King as a candidate for a seat in the second constitutional convention. In 1848 he was a candidate against Levi Hubbell for the office of judge of the second circuit, comprising Milwaukee, Waukesha, Jefferson and Dane counties, but was unsuccessful. The following incident, narrated by Edwin E. Bryant in his sketch of the supreme court,\* it is said, explains his defeat, "Before coming to Milwaukee, and in his youth, he was justice of the peace in Cleveland, Ohio. During a 'scare' in regard to the small-pox a person afflicted with that disease had been placed in an isolated building, and there left alone, no one being allowed to visit him. A humane and high-spirited physician, in violation of municipal regulations, broke into the building and ministered to the sick man. For this humane and lawless act he was brought before Justice Smith, who imposed a heavy fine. In the office of this doctor was a young Irish student, William H. Fox, who afterwards became an excellent and influential physician in Dane county, Wisconsin. When Mr. Smith became a candidate for circuit judge, Dr. Fox took the field against him, having stored away a grudge for this severity to the good samaritan, his medical teacher. By his activity in Dane county the scales were turned, and Smith was defeated by a few votes, and Doctor Fox declared 'the account settled.' " Judge Smith continued his practice in Milwaukee until his election to the supreme court in 1852.

An incident is related which throws some light on the political methods of those days. Judge Hubbell and Judge Smith were candi-

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\*9 Green Bag, 110.

dates for the democratic nomination for chief justice. Smith's friends advised him, after the convention had met, to become a candidate for associate justice; this he consented to. A motion was made in the convention to nominate the candidates for associate justices first. The convention was surprised, the motion was put so quickly that protests were unavailing and was declared carried before those opposed to it could manifest their opposition. Smith and Crawford were nominated for associate justices and Milwaukee, having a candidate in the person of the former, could not press Judge Hubbell as a candidate for the chief justiceship, and Judge Larrabee was chosen, but failed of election. Judges Smith and Crawford were elected. The former's views on the powers of the state and federal governments, as expressed in the case arising out of the fugitive slave law,\* cost him his seat. Byron Paine was selected as a candidate by a caucus of republican members of the legislature and leading men of that party, and Judge Smith did not become a candidate. He returned to Milwaukee at the close of his term and remained in practice there until the civil war opened; though for a brief period he was the editor of the *Free Democrat*. Soon afterward he accepted from the government an appointment in South Carolina as tax commissioner, and spent most of his time there till his death, which occurred in New York City, June 3, 1865. His interment took place in Milwaukee on the 11th of the same month.

Referring to the strong views held by Judge Smith on the question of the rights of the states (which were expressed in opinions written by him in controversies growing out of the fugitive slave law), Jonathan E. Arnold said on the occasion referred to: "There were some points in his peculiar political and constitutional views, which have made him so prominent both at home and abroad, about which there is and will be a difference of opinion. But whether they were true or false, right or wrong, he was the leading spirit that originated and taught them. He lived to see them become the settled law and policy of the state, and they were incorporated into and adopted by every department of the government." Referring to this subject Justice Cole, who sat

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\*See General Winkler's contribution, ch. 2.

on the bench with Justice Smith for four years, said: "Judge Smith was endowed by nature with a singularly original and vigorous mind, which had been invigorated and enriched by much reading and learning. He had an abiding love for and devotion to the great principles of civil liberty and natural justice; and I believe it was the strongest desire of his soul that every human being, however degraded, should enjoy his natural rights. And if, for the purpose of securing these rights to the downtrodden and oppressed, Judge Smith ever advanced from the bench constitutional views which some deem unsound, it is sufficient to say that the great mass of the loyal people of the country have adopted his views in regard to the particular law which called them forth, overlooking his errors, if he fell into any, and freely pardoning something of the spirit of liberty by which he was actuated. Furthermore, he was fearless and independent in all his judgments, following no authority which did not seem to be founded on principle and reason." Justice Cole further said of Judge Smith: "All his opinions were well written and will compare favorably with those of any contemporary judge of our sister states, while some of them are marked by remarkable ability and force of reasoning. It was impossible to become acquainted with Judge Smith without discovering many traits of character which would command love and regard. . . . He was genial and warm in his feelings. He was also constant in his attachments, and open, direct and manly in all his conduct. I can but believe that he enjoyed to the last, in a high degree, the personal regard and good will of all his professional brethren of the bench and bar of the state."

Judge Smith reported the cases in volumes I to II, inclusive, Wisconsin reports, covering the years 1853 to 1859.

#### ORSAMUS COLE.

On the 15th of June, 1855, Orsamus Cole entered upon the discharge of his duty as an associate justice of the supreme court, a tribunal to which he brought the most patient industry, a highly cultivated mind, the highest type of character, a marked judicial temperament, and in which he was an ornament for nearly thirty-seven years.



The birthplace of Orsamus Cole was Cazenovia, Madison county, New York; the time August 23, 1819. In 1843 he was graduated from Union college. After preparing for the practice of the law he came as far west as Chicago, but remained there only a few months, when, in 1845, he removed to Potosi, Grant county, Wisconsin, in the lead mining region. In connection with William R. Biddlecome he built up a good practice and remained there until the performance of official duties imposed upon him by the will of his fellow citizens necessitated a change of residence. In 1847 he was elected a member of the second constitutional convention from Grant county, "in which body he served with marked fidelity and ability. He was a member of the committee on executive, legislative and administrative provisions, and was one of the most faithful and hard-working members upon it. Mr. Cole was one of the youngest members of the convention, and his proverbial modesty caused him to shrink from taking a leading part in the debates for some time; but he soon took rank among the ablest and clearest debaters in that body of able men. His cautious habits made him a most valuable man in forming the organic law of the state, and at the close of the session but few men stood higher in the estimation of his fellows than did Orsamus Cole. He had taken prominent part in the shaping of all the more important articles of the constitution."\*

In 1848 Mr. Cole was elected to Congress as a whig, his opponents being A. Hyatt Smith, democrat, and George W. Crabb, free soiler. Notwithstanding the changes in political views and affiliations which resulted from the succession of Mr. Fillmore to the presidency, on the death of President Taylor, Mr. Cole stoutly maintained his anti-slavery principles and earnestly opposed the enactment of the compromise measures and the fugitive slave act.

At the close of the thirty-first Congress Mr. Cole returned to Potosi and resumed the practice of his profession. In 1853 he was made the whig candidate for attorney general, and was a candidate for that office upon the people's ticket, a consolidation of the whig and free soil parties. The whole ticket was unsuccessful. At about this time Mr. Cole was

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\*Fathers of Wisconsin, p. 196.

nominated for the state senate, but was defeated by a small majority by Nelson Dewey, then ex-governor.

By the winter of 1855 the republican party had secured a majority of the members of the legislature. Party feeling was strong, and the objections to a partisan judiciary had not been so fully appreciated as in these later times. Judge Samuel Crawford's term upon the bench of the supreme court was to expire in June of that year, and he was a candidate for re-election. A caucus of the republican members of the legislature placed Mr. Cole in nomination to succeed Judge Crawford, notwithstanding the candidacy of Timothy O. Howe for the honor and the fact that Mr. Cole was not a candidate, did not know that his name was to be considered, and doubted his fitness for the place. On learning of his nomination his purpose was to decline it; and it took the strong persuasions of his warmest friends, including C. C. Washburn, to dissuade him from his purpose. The election resulted in Mr. Cole's success, and in June, 1855, he assumed the duties of his position. In 1861 Judge Cole was re-elected, receiving 56,171 votes against 50,315 for James H. Knowlton and between 5,000 and 6,000 for Charles A. Eldredge, and in 1867 by 46,895 votes as against 8,236 for Lucien P. Wetherby. In 1873 there was no opposition to Judge Cole's re-election; but in 1879 Judge M. M. Cothren, of Mineral Point, became a candidate and made an effort to secure his election, with the result that Judge Cole received 100,692 votes to 67,554 for his opponent.

In November, 1880, Chief Justice Ryan died, and Governor Smith, in response to a prevalent sentiment among the lawyers and people, appointed Judge Cole his successor. At the election in April, 1881, that appointment was ratified by his election, without opposition beyond a limited number of scattering votes, for the unexpired and the full term of ten years, thus making his term end January 4, 1892, and extending his whole consecutive judicial labor over almost thirty-seven years.

On the 29th of December, 1893, Charles E. Dyer, formerly United States judge for the eastern district of Wisconsin, presented the supreme court a portrait of Judge Cole. His remarks on that occasion and the response thereto by Chief Justice Lyon so faithfully portray the judicial

career of Judge Cole that they are reproduced here without material condensation. Mr. Dyer said that Judge Cole's "connection with this high court of judicature, extending through a period of nearly thirty-seven years, entitles him to this recognition." Public position is to be valued in precise proportion to the fidelity with which its duties are performed. The value to the state of the public life of Judge Cole must be estimated in accordance with that principle, and so estimating it, his service has been invaluable. The political world, oftentimes with turbulent demonstration and even unseemly flattery, bestows its honors upon its living idols and heroes. Why should not those whose lives have been laboriously spent in the retiracy of judicial vocation, fashioning and building the jurisprudence of a commonwealth, be also kindly remembered, and their achievements suitably recognized, while they are still with us and of us and may yet enjoy the pleasures of happy retrospect and the realization of the public gratitude.

"The work of the bench is growing to be more and more valued and its power more and more felt. A preacher of distinction, whose thoughts keep pace with modern progress, says the bench of the current times seems as pure as the closet of literature. Further, he says, it is the happiness of the bar to congratulate the times over the fact that the judges in the higher courts draw their decisions from the law and the evidence; 'and that whereas one age was happy in possession of one honest judge,—Matthew Hale,—our country is happy in the possession of many such administrators of justice. More and more have educated men in literature and in the professions sought to combine with their mental gifts and their position the fame of integrity.'

"Every lover of this country must rejoice that this is so; for, 'the fame of integrity' endures, when, without it, brilliancy of intellect perishes with the decay of its possessor.

"The public career of Judge Cole forms a large part of the judicial history of the state, and has secured to him the true fame of which I have spoken. He has been associated with all members of this court in unbroken succession, from June, 1855, when Edward V. Whiton was chief justice, to the time when he left the bench, himself chief justice, January



4th, 1892. His judgments may be read in every volume of the Wisconsin reports from the fourth to the eighty-first volumes, both inclusive. The value of his contributions to the jurisprudence of the state is in equal proportion to the extent of his work.

"He had not been long on the bench when it devolved upon him to deliver judgment, in concurrence with that of his associates, in a cause which had for its advocates on one side or the other such lawyers as Jonathan E. Arnold, Edward G. Ryan, his honor, Mr. Justice Orton, Matthew H. Carpenter, Timothy O. Howe, and James H. Knowlton. I refer to the celebrated case of *Bashford vs. Barstow*.

"Then coming down to the period of the civil war, in the case of *Griner*, reported in 16th Wis. Rep., Judge Cole delivered the judgment of the court—and it was most instructive and exhaustive—sustaining the power of the President to call out the militia to execute the laws of the Union, and his authority, for that purpose, to draft and call into the field the quota of militia assigned to the state. And in the same volume is reported his opinion with those of two other eminent judges, Dixon and Paine, in the case of *Kemp*, wherein it was adjudged that the proclamation of the President suspending the privilege of the writ of habeas corpus was not a legal and valid exercise of executive power, under the constitution and laws.

"In *Jones vs. The Estate of Keep*, reported in 19th Wis., Judge Cole delivered the judgment of the court that the provision of the act of Congress of 1862, which required stamps to be affixed to 'writs or other original process by which any suit is commenced in a court of record,' was unconstitutional and void, holding that such writs or other processes were essential means by which the state governments exercised their functions, and therefore exempt from taxation.

"Other causes involving important public questions in which Judge Cole promulgated the law, such as *Delaplaines'* case, reported in 42d Wis., which presented the great subject of riparian rights, might be alluded to, but with all of them the courts and the bar are familiar.

"Human ambition may well cease its struggle, and intellectual effort may exchange activity for repose, when both have been crowned with

a life work so useful and complete. To nobly and honorably connect one's name with the jurisprudence of a nation or a state, is to achieve that character of fame which no changes of time or circumstance can efface. The work of the artist's brush or the sculptor's chisel, highly wrought and finished as it may be, may perish in the scourge of the destroying elements, and be lost even to memory. But though the memorial, whether in portrait or statue, become extinct, the fruits of the learning and research and toil of the subject of that memorial remain in their richness and excellence, and are imperishable.

"Generations may come and go, but the judge on the bench and the lawyer at the bar will continue to appeal for support and justification to the jurists who have stamped their judgments with the character of commanding authority. For they are such as have lived

'To clutch the golden keys,  
To mould a mighty state's decrees.'

"Thirty-seven years measure the period of many a professional lifetime. It has been the happy fortune of the judge whose service on the bench of this court we commemorate, to have faithfully and honorably discharged the functions of his high office for nearly that whole period. We of the bar take just pride in such a record of judicial achievement. But the testimony to the worth and value of the work of Judge Cole is not limited to such as springs merely from local regard and pride. He has achieved honorable place among the jurists of the land. He was a pure judge, an upright judge, a just judge. He mastered the facts and enunciated the law. Patient, thoughtful, laborious, kind, attentive and true to every dictate of conscience and sense of duty, he stands as a model for judge and lawyer to copy."

On behalf of the court, Mr. Chief Justice Lyons responded as follows:

"Judge Dyer: My brethren have placed me under a great obligation by awarding me the privilege of expressing to you our united thanks for your generous donation of the portrait of Judge Orsamus Cole, late the chief justice of this court. It has been placed and will

remain with the portraits which adorn these walls of several former justices of the court with whom he served. The artist has happily succeeded in catching and perpetuating upon the canvas the calm, benignant expression of face and feature which beamed upon more than a generation of lawyers who practiced in this court while he was one of its members,—an expression which never darkened and which always inspires respect and affection.

“My brethren also especially desire that you be assured of our united appreciation of your timely and most eloquent remarks on this occasion, in which, in fitting terms, you have rendered just tribute to the fidelity and usefulness during his long judicial career, as well as to the great ability, of our friend and former official associate. And, better than all else, what you have said of the loveliness of his character finds a cordial response in each of our hearts.

“Judge Cole is the last of the elected chief justices of this court. This portrait will occupy the panel reserved for it with the portraits of the other chief justices by election,—Whiton, Dixon, and Ryan,—together with that of Chief Justice Dunn of the territorial supreme court. All these were able jurists and were prominent and useful in laying the foundations of our jurisprudence in broad and enduring principles. The fame of some of them is national. It is no disparagement to the memory of the others to say that in symmetry of character, in untiring, well-directed industry, in strength and accuracy of judgment, in love of justice, in obedience to the law, in unswerving fidelity to duty, Chief Justice Cole is the peer of any of them. We pay honor to the memory of either of those great chief justices when we say of him that he was the peer of Chief Justice Cole. For more than thirty-six years he was an honored member of this court, and during that time took part in the adjudication of thousands of causes. Many of them involved questions of vast importance to the state—some were of national concern—and all of them affected rights of person, reputation or property. Their determination required careful study and wise discrimination, so that the law should be correctly stated and applied. In the discharge of these high duties, Judge Cole patiently listened to argument and the views



of his brethren, carefully weighed the same and investigated for himself, and, when convinced, gave judgment, and gave it in obedience to the law and in fear of God. He feared none else. Such a man can never be moved by applause or censure, no matter from whence it comes.

“During the last few years of Judge Cole’s service here, the business of the court was conducted almost entirely by lawyers who were admitted to practice in this state after he became one of its members. It is a great satisfaction to know that in what we are saying on this occasion we voice the unanimous sentiment of all who ever practiced before him, as well as of all the people of our state who have had opportunity to know his services and worth.

“The record of Judge Cole’s judicial life, and the evidences of his great ability, are contained in seventy-eight volumes of Wisconsin reports—from volume 4 to volume 81 inclusive—in which are reported the opinions and judgments of the court in about eight thousand causes. Besides those in which he wrote the opinions, nearly all the others passed the scrutiny of his conscientious investigations both of fact and law,—a record of judicial labor which has seldom been surpassed. I should do violence to my feelings were I to abstain from reproducing here what you said of Chief Justice Cole, when, two years ago this day, exercises were had in this place in memory of Chief Justice Dixon, then lately deceased, on which occasion you were one of the speakers. These were your words: ‘For more than thirty-six years he sat upon this bench, administering justice to his fellowmen in a spirit and with a devotion perfectly consonant with his pure and stainless life. A record without a blemish. A name imperishably associated with the judicial annals of the commonwealth. Having been in early years the contemporary and associate of Whiton, Smith, Dixon, Paine, and Downer, and thenceforward of Ryan and Taylor, and the present members of this court, his memory covers a period of judicial history replete with interesting retrospect and reminiscence. Happy logic of events it was, that crowned such a career with the chief justiceship of a court which is the pride and glory of the state. With head whitened in public service, he has carried with him in his retirement not alone the reverent respect and

high esteem of his brethren of the bench and bar, but he shall go laden with the spontaneous tributes of their affection and with the earnest wishes that many years of health and happiness may yet be his lot and portion.' ”

From 1876 until 1892 the editor of this work was in almost daily contact with Judge Cole, and, notwithstanding disparity in years, attainments and position, flatters himself that he enjoyed some measure of that distinguished gentleman's respect. Such knowledge of him as has thus been gained has been one of the delights of life and has led to a measure of respect which is beyond expression, though it would fain pay some tribute to him. Instead of attempting anything because of the apprehension that due moderation might not be observed quotation is made of language applied by Hon. Seymour D. Thompson to the late Judge Howell E. Jackson: “As a lawyer, he was studious, careful and accurate. As a statesman, he was incorruptible, moderate and just. As a judge, he was laborious, impartial, patient and urbane. As a man, he was a character to be envied, and a model to be imitated. Possessed of that unaffected gentility which is the result of a mingling of self-respect with respect and kindness for others; always self-restrained; never giving nor unduly resenting offense. Not a prodigy; not a genius, not possessed of those commanding powers which in other men make leadership and sway so easy; but amply endowed, and making the best use of the powers he had. Not a religious fanatic, but a firm and consistent Christian. Not a moral enthusiast, but a moral example. A character abounding in lines of beauty, and showing scarcely a blemish or defect. Nowhere exaggerated, but everywhere strong. No extraordinary development in any direction, but everywhere well filled out:

‘Strong, without rage; without o’erflowing, full.’ ”

At the time of this writing Judge Cole is residing in Milwaukee with his son, Sidney H. Cole. His health enabled him to attend the semi-centennial exercises commemorative of the organization of the state at Madison in early June, 1898. He was the only member of the second constitutional convention present; though but for the sudden death of







*Luther S. Dixon*

A. M. Carter, of Rock county, at the Mendota hospital on the 7th of June, he would have probably had the pleasure of meeting one of his fellow-members in that body.

The death of Judge Whiton, in April, 1859, made the next change in the membership of the court; to fill the vacancy thus caused Governor Randall appointed Luther S. Dixon as chief justice; he qualified April 20, 1859, and served until June 17, 1874, when he resigned.

### LUTHER S. DIXON.

Mr. Dixon was born in Milton, near Burlington, in the valley of the Lamoille, Vermont, June 17, 1825. He came of the sturdy stock of the farmers of that vicinity. He was educated in the common schools and academies of that region and, in addition, was, for a year or two, a student at the Norwich military academy. It is said that he took high rank there as a student, being especially strong in Latin. The means necessary to defray his expenses as a student were procured by teaching school. His legal education was obtained in the office of Luke P. Poland, a widely known lawyer, judge of the Vermont supreme court, United States senator and member of Congress. Mr. Dixon was admitted to the bar in 1850. In 1851 he came to Wisconsin and entered upon the practice of his profession at Portage. While resident there he was twice elected district attorney of Columbia county, and while discharging his duties as such was brought into local prominence by the trial of a murder case in which he was opposed by two of the older and ablest lawyers of the state. On the resignation of A. L. Collins as judge of the ninth circuit Governor Randall appointed Dixon his successor in 1858. Of his career as circuit judge Mr. Pinney has said that "by his frank, genial and manly bearing he won his way to public confidence and esteem. Few of our public men have had the faculty of so readily attracting friends and admirers, and no one had less inclination to seek political honors at their hands. He came to the bench of the ninth circuit at an early age, with a professional experience of not more than seven years. He manifested great facility and fairness as a trial judge.

His calm, deliberate, and patient, but resolute methods, united to a skill in the exercise of that judicial discretion that a trial judge has almost constant occasion to use, with readiness in the application of legal principles, rendered him a most acceptable and satisfactory judge. Liberal in the administration of the practice of the court, he took care that liberality did not beget looseness of practice, and that it did not operate to the prejudice of the opposite party."

In 1859 the death of Chief Justice Whiton made it the duty of Governor Randall to appoint a person to fill that office. He appointed Judge Dixon, who was then thirty-three years of age, and had but a few months' judicial experience, and who was comparatively unknown throughout the state as a lawyer and jurist. The appointment was regarded with some distrust for these reasons. This was removed soon after opportunity came to the appointee to show what manner of man he was.

"Very soon after his appointment his judicial fearlessness and stamina were put to the test. The court had previously decided the fugitive slave law unconstitutional, and that the state courts and judges could issue writs of habeas corpus and discharge prisoners from custody who were arrested by federal authority for violating it. Booth (as elsewhere stated) had been convicted in the United States district court, under Judge Andrew G. Miller, for assisting in the rescue of Glover, the fugitive slave, and had been convicted, and the supreme court of Wisconsin had, upon habeas corpus, discharged him. The court had also, in 1857, disregarded the writ of error sent down by the supreme court of the United States to call up the record for review, and had directed its clerk to make no return to it. In 1859 the supreme court of the United States, having obtained a copy of the record unauthenticated, proceeded to review and reverse the decision, in the case of *Ableman vs. Booth*, 21 How., 506, and sent down its mandate and remittitur. A motion was made to file them. On this motion Chief Justice Dixon filed a lengthy opinion in support of the appellate jurisdiction of the federal supreme court over the case. (11 Wis., 498.) This raised a storm of censure in the republican party, to which Dixon belonged. The republican press



opposed his election, which must be held in the spring of 1860. A 'state-rights' candidate was put in nomination. Chief Justice Dixon was called out to 'run independently.' The republican press quite generally opposed his election, though a very considerable portion of the republican party did not endorse the ultra 'state-rights' position of the court in denying the appellate jurisdiction of the federal court of last resort in the fugitive slave law cases. Judge Dixon received his first election from the people by a majority less than 400, in a vote of about 113,000. The campaign was quite spirited, especially in the newspapers. A notable event of the election was a speech by Hon. Abram D. Smith, ex-judge, in support of the decisions he had made, and an answer to it by Hon. Timothy O. Howe. These speeches were an elaborate discussion of the aspect of the 'state-rights' doctrines, which had attracted such wide attention.

"The war came on, and the 'state-rights' question soon became, to use the familiar phrase of the politician, 'a dead issue.' Judge Dixon's subsequent elections were without opposition,\* except one which signally demonstrated his strength with the people. He found it hard to support his family on the small pay allowed. In 1867 the salary was raised by law from \$2,500 to \$3,500, but by the constitution this increase could not apply to his then present term. He resigned, and the governor at once appointed him till the vacancy could be filled by election. The democracy were then organizing for the presidential campaign of 1868, and sought to make capital out of the fact that the chief justice had evaded the constitutional bar to increase of salary by a resignation and reappointment. They ran Judge Charles Dunn against him in the judicial election of 1868, but he was elected by a large majority. He was chief justice until 1874, when he resigned, in the midst of his term. The meager salary (\$5,000) drove him to seek more lucrative employment at the bar. The bench and the bar greatly regretted to

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\*This is an error. In 1863 Judge M. M. Cothren was the democratic candidate for chief justice; and while he received a majority of the home vote the soldier vote in the field turned the scale in favor of Judge Dixon. A. Scott Sloan was the republican candidate for chief justice in 1860.

lose his judicial work, for he stood admittedly among the foremost judges in the Union. His reputation had become national.”†

On leaving the bench, Judge Dixon took up his residence in Milwaukee, and became the senior member of the firm of Dixon, Hooker, Wegg & Noyes, one of the strongest firms in the state. Soon thereafter he appeared as counsel for the state in the celebrated “granger cases,” which involved the power of the legislature to regulate railroad charges. The origin of these cases and an account of Judge Dixon’s appearance in them in the federal court has been thus written of: “The Patrons of Husbandry had become a strong order among the farmers. Strongly impressed with the idea that the railways were

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†Edwin E. Bryant in vol. 9, *Green Bag*, 118. These observations have been made by Mr. Bryant concerning Judge Dixon’s opinions: His decisions are always interesting reading. They are notable for their logical strength, and are never wanting in an unstudied eloquence and beauty of expression. He was a man of original mind. He did his own thinking and reached his own conclusions. Free from pride of opinion, he could review his own decisions, acknowledge errors, and reverse or overrule himself. Usually of a serious and solid tone and style of discussion, there occasionally crept into his opinions some quaint phrase or metaphor or illustration revealing the wealth of humor which bubbled out in his private conversation. In one case, where he was compelled to hold that the “married women’s act,” allowing the wife to hold and control her separate estate had not absolved the husband from liability for the ante-nuptial debts of his wife, he said: “The modern husband is twice happy. First, he is happy as the quiet spectator of his wife’s enjoyment of her property; and again he is happy in paying her debts, or, if he refuses, in being sued and compelled to pay.” (19 Wis., 336.) In another case he was combating the position that a person could build a store building, rent the lower floors, and live with his family in the fourth or fifth story, and claim the whole building as an exempt homestead, and he illustrates the absurdity, as it seemed to him, of the position. He says: “We are told in history that Diogenes, the celebrated cynic philosopher, at one time took up his abode in a tub belonging to the temple of Cybele. I suppose the tub became ipso facto a dwelling-house, in the ordinary sense of that word; and that hereafter strict propriety of language will require us to say that he lived in a dwelling-house belonging to the temple instead of a tub. Nay, more, I suppose the moment the philosopher got into the tub, that he might, had he been so inclined, have claimed it as exempt under the operation of a statute like ours.” In a case under the statute forbidding the selling of liquors to minors, the point urged in defense was that the defendant did not know that the vendee was a minor, and that the statute ought to be construed as if the word “knowingly” were in it. Judge Dixon took the other view, and succinctly states the law to be that the saloon keeper “must know that the person to whom he sells is a qualified drinker, within the meaning of the statute; and, if not, he acts at his peril.”

charging exorbitantly for freight and passenger carriage, they made a special effort to carry the legislature in the fall of 1873 and the following winter. The democracy were shrewd enough to nominate for governor a prominent farmer and leader in the granges. The legislature and the governor were elected on the 'boom' of this new issue, and at the following session a law was passed fixing a limit to railway fares and freights within the state. The railway companies took advice from distinguished sources, and having the written opinions of B. R. Curtis, William M. Evarts and George F. Hoar that the law was unconstitutional, refused to obey it, and so notified the governor. Thereupon suits were instituted—one by the state to enjoin the companies from disregarding the law, one in the federal court by some non-resident bondholders to enjoin the state railroad commissioners from taking any step to enforce the law. An able array of counsel appeared on both sides with ponderous printed arguments. Judge Dixon was retained in behalf of the state, and his friends were out in great force to hear 'the effort of his life' at the bar. They were a little surprised and disappointed when he began. He had no brief; he hesitated. He pulled first from one pocket and then another little scraps of paper on which he had jotted down points and authorities. His effort, to the audience, seemed a flat failure; but it is told that, when the judges met in the consultation room, Judge Davis remarked 'Dixon has told us the law of this case;' and the court, and later the supreme court of the United States followed his exposition and settled the then burning question as to legislative control over corporations."\*

It is generally believed that Judge Dixon might, had he consented, been chosen United States senator in 1875, there being a dead lock between the candidates. When approached on the subject he said that he could not afford it.

Judge Dixon continued to reside and practice in Milwaukee until 1879, when he was obliged, by reason of asthmatic troubles, to remove to higher altitudes. He went to Colorado, and there built up a profitable practice. His family remained in Milwaukee, and he considered

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\*9 Green Bag, 119.



that his home. In the latter part of November, 1891, he came to Milwaukee, after a professional visit to Washington. His disease had told upon him, and soon ran its deadly course. On the 6th of December, 1891, the end came. On the 29th of that month a committee of the bar—Edwin E. Bryant, Moses Hooper, George H. Noyes, A. A. Jackson and James B. Taylor—presented a memorial of the deceased judge to the supreme court. The following paragraph will show the spirit of that memorial and the place of Judge Dixon in the estimation of the legal profession: "Among the many distinguished names on the roll of our profession in Wisconsin, none shines with brighter luster than his; none is more prominently associated with its judicial history, and he has graven deep and lasting lines of influence upon the jurisprudence of the state. Among our great jurists none will be longer remembered for the qualities that command admiration and kindle warm attachment than he, whose manly personality won the regard and confidence of men in every walk of life. To the members of the bar of the supreme court whose work reaches back to the period of his service there remains a memory of one who presided with eminent ability, with a befitting dignity so blended with kindness, patience, consideration for every advocate who appeared before him as to make him loved and honored by the whole brotherhood of the bar. To all these the announcement of his death brings a deep sorrow. The world seems more lonely when so manly, so strong and helpful and so gentle a spirit passes out of it; and our profession suffers a loss, the sense of which will long abide."

The memorial was submitted with addresses by G. W. Hazelton, Charles E. Dyer, F. C. Winkler, Winfield Smith, Thomas R. Hudd, Moses Hooper, S. U. Pinney and Bradley G. Schley. The address of Mr. Dyer follows:

"Luther S. Dixon, the eminent jurist, the accomplished lawyer, the just and true man, has finished his work and reached his journey's end. How true are the words of one of the world's great writers, that there is not a curfew bell but tolls at every evening hour the knell of some departing friend. It is the fate of mortality. We go the way of our fathers. Nature has so written it. Death is but submission to law.

The visitations of that dread power, which sever all human relations and terminate all human experiences, are impartial because they are in obedience to law. If life is either lost or rescued, it is because the law of animate and inanimate existence, inexorably applied to existing events, unerring and suspended in its operations, controls the ultimate result. In giving up his mortal life, therefore, our brother but submitted, as all men must do when 'the mould of nature's fabric' is broken, to nature's final decree.

“Since his public services were so distinguished and his whole professional career so honorable, it is most fitting that these memorial services should have been appointed, and in this high and sacred place it is most appropriate that his virtues should be commemorated. And here it is worthy of remark that it is rare, indeed, that the bench and bar of two states far distant from each other mingle their grief at the grave of one beloved in common by all. But it was Judge Dixon's rare fortune to have commanded the high respect and won the affectionate regard of the bar of Colorado and the bar of Wisconsin equally and alike. This was worth living for. This is the reward of a manly, noble and useful life. Better than great riches, better, far better, than any emoluments of political place, better than any other title of honor, is such achievement as this. To be thus enshrined in the memories of our fellowmen is to attain the summit of human endeavor and aspiration.

“The work of Judge Dixon as chief justice of this court began in 1859 with the ninth volume of the reports, and closed in 1874 with the thirty-fifth volume, covering a period of about fifteen years. Richly endowed with the qualities essential to success in judicial labor, his work as a member of this court has indelibly impressed his name upon the jurisprudence of the state. In mental as in physical stature he was commanding, broad and strong, and his presence here will not be forgotten by any who ever came to present their causes to this court in his time. The bench was his place. He was through and through a judge. He adorned and honored the judicial office. He fulfilled its high requirements, and to say this of any man is to bestow upon him the

most honorable eulogium. It is a serious thing, as your honors know, to be the arbiter between one's fellowmen. No functions are more exalted, no duties more grave. He who trifles with judicial position, he who in the slightest degree, by partisanship or otherwise, dishonors its dignity, he who does not keep the ermine as white and spotless as virgin purity, is unworthy of any trust. This was the sentiment of our friend, and the name of Dixon is the synonym of justice, integrity, truth, and honor. These were virtues which illumined his character, radiant as the sunlight, shining as the stars.

"His judgments are among the jewels of our jurisprudence. Without exception they bear the stamp of his penetrating and vigorous mind. None fail in that lucidity of statement, strength of diction, and cogency of argument which were his happy gifts. If his intellect was not what may be called brilliant, it was comprehensive and powerful. If he was sometimes wanting in that mental alertness and dexterity essential to emergencies in forensic strife, his masterly powers of deliberation and discrimination made him an ideal judge and a wise and safe counsellor.

"In his convictions he was resolute and courageous. When aroused by needs of the occasion and by the conscious strength of the cause he advocated, I have more than once seen him summon to his command latent powers, the exercise of which instantly gave him the mastery of the struggle. He needed a great cause to bring to the surface his whole strength. He loved legal investigation more than aught else, and he applied himself to it with unwearying diligence. Visiting his office in Denver one day during the past summer, I found a veritable armory of law and law books, and there, I was told, when in health, he reveled in great questions and cases.

"As both judge and practitioner, Judge Dixon appreciated the supreme rank of usefulness occupied by the true lawyer. His standard of professional conduct was lofty. It could not be otherwise and be in harmony with his own nature. He disdained the little things on which little men thrive, and he viewed with contempt every deviation from honorable purpose and conduct.

"On the bench he was not much given to speech, for he believed



in the saying of Lord Coke that 'a much speaking judge is not a well tuned cymbal.' When he interrupted it was to keep the argument to the point.

"He had high respect for sound authority, but he believed also, as his opinions show, in original processes of reasoning. Some men have the faculty in the highest degree of stating with precision what the law is. Others have the faculty of stating what the law ought to be. Dixon knew what the law is, and could state it so accurately that it was dangerous to controvert his proposition. If as a judge he was convinced that he had committed error, no pride of opinion would stand in the way of its correction. For, like Lord Hardwicke, he would think it 'a much greater reproach to continue in error than to retract it.'

"At all times frank and courteous, every impulse of his nature was generous and noble. His heart was large, his society was congenial, his salutation was hearty. He was plain and unobtrusive. He affected nothing. On the bench and at the bar his demeanor towards his professional brethren was always that of kind and cordial recognition. I recall as a pleasant memory my first case in this court more than thirty years ago, when Mr. Justice Lyon came with me as associate counsel and as my personal friend, for I found that the young lawyer was received by Chief Justice Dixon and his associates with the same consideration and kindness as was any veteran of the bar.

"As a companion, Judge Dixon was delightful. Judge Drummond—who also sleeps the sleep of the just, and whose name I reverently speak—was wont to say that it always was a pleasure to meet Dixon, he was such a likeable man. Genial in temperament, cultured in literary acquirements, fond of anecdote, and abounding in great sense of humor, he possessed most happily those qualities which drive away dull care when the hours of serious occupation are past.

"It is good that such men have lived, and that they will continue to live. They give hope and strength to other men. They cheer and brighten life's journey. When they go from us they leave rich memories of manly life and noble achievement. The recollection of their virtues inspires us anew to the performance of every duty, and prompts

to the emulation of their example. One after another our companions in professional business and social life disappear from our presence. They leave us to struggle, as they have done, with the great problem of the future. Forever, here, the evidence 'of things unseen' may to many thoughtful men remain inconclusive; but such evidence as the human mind can grasp confirms the hope of another life where such shadows and griefs as cloud this mortal existence give place to higher conditions. Reason as we may,

'The voice of nature loudly cries,  
And many a message from the skies,  
That something in us never dies.'

"Since his time had inevitably come, it was a happy circumstance that the friend whom we mourn should come back to home, family, and friends to lay down life's burden. And it is most appropriate that within view of that capitol, in the state where he earned his greatest and his enduring fame, his mortal remains should rest in the keeping of those he loved and who loved him."

On behalf of the court, Chief Justice Cole said:

"Because of my official association with Chief Justice Dixon for the entire period he occupied a seat on the bench, my brethren think I should make the response of the court to the memorial of the bar which has been presented. I need not say that the court receives this memorial with a feeling of deep sensibility and sorrow. The members of the court, as doubtless many of the bar, entertained for Judge Dixon the affection of a brother. He held that relation in our hearts and thoughts, consequently a personal grief mingles with the sense of the loss the public has sustained in his death. It is eminently proper that Judge Dixon's name and memory should be honored in this tribunal where he occupied the position of presiding judge for fifteen years, and until he voluntarily resigned the office, elevating the character of the court and giving luster to it by the preëminent ability and great learning which he exhibited in the performance of his official duties. It is fitting, too, that we should here pay to him our tribute of respect; that we should give free and full expression to the feelings of love and

affection for him as a man, a friend, a judge, which we cherish in our hearts. It is true, some years since, Judge Dixon withdrew from the practice of the law in this state, and resumed it elsewhere, where the climate was more favorable to his health; but he always regarded himself as a member of the bar of this state. He never fully severed his connection with it. He considered this state as his home. It was here his family resided; and his dearest hopes and warmest friendships were associated with our people and the state. If alive he might well claim kindred with our bar and have that claim allowed; and surely his fame as a jurist belongs to Wisconsin. It will ever be cherished by our bar and people as a most priceless possession.

"I need not dwell in this presence upon the personal characteristics of Judge Dixon. You know him well by long acquaintance. You know how he drew men to him and made them his own by his genial, friendly, and kindly manner, by his large heart, so tender and true, and by his manly, noble personal qualities. And yet he made no effort to secure friends. He never courted public favor or public applause, but he attracted men to him by his open, manly conduct and the innate goodness and kindness of his heart and disposition. Such was Judge Dixon as a man, companion, and friend, noble and true and just in his relations to society and to our profession, worthy of all love, affection, and admiration which we felt for him while alive, and which we now feel for him since he has passed from us to be seen no more.

"I had not much acquaintance with Judge Dixon when he was appointed chief justice of this court in 1859. I had met him only a few times, but he had not appeared before the court to argue any cases while I had been on the bench. At the time of his appointment as chief justice he was a young man and comparatively unknown throughout the state as a lawyer and jurist. There was an impression, how general I will not undertake to say, that he had not sufficient professional training and experience to fully qualify him for the high and responsible office of chief justice when appointed; but a brief trial amply vindicated the wisdom of his appointment. If he was not at the time of appointment a learned and profound lawyer, he was thoroughly imbued with



the principles and rules of the common law and of equity jurisprudence. He had a discriminating mind and retentive memory, was gifted with robust common sense as well as a nice sense of justice and right. He was most laborious in his investigation of causes, and failed not to read the law found in the books which had a bearing upon the case which he was called upon to decide. He rapidly acquired and appropriated legal learning as found in the writings of the authors of our profession. He illustrated and enriched his opinions by the result of his reading and research. He was endowed naturally with remarkable logical powers, and all of his opinions are marked by great closeness and strength of reasoning and clearness of expression. Massiveness and compactness of logic characterized his most important decisions. That he was firm and fearless in adhering to his convictions was singularly illustrated in 1859, when, contrary to the views of the political party with which he acted, he fearlessly held to the opinion that the supreme court of the United States had the right, under its appellate jurisdiction, to review the judgment of this court which discharged on a writ of habeas corpus a citizen arrested for the violation of the fugitive slave law, so ready was he to disregard party ties and all party associations when they came in conflict with what he deemed to be the law. He came to this bench at a most critical period in the history of the court. Questions of constitutional law involving the objects, the limit, and rule of taxation under our constitution; of the validity of municipal indebtedness; of the liability of railroad corporations for injuries to person and property resulting from the negligence of their employes; of the relation of the state and federal judiciary; soon to be followed by the supremely important questions growing out of the rebellion, such as the power of the President to suspend by proclamation the writ of habeas corpus; the validity of the law authorizing the draft, and one permitting the soldiers in the field to exercise the elective franchise; the validity of the legal tender act and of the bounty laws; the right of Congress to tax the process of state courts, and other kindred questions of transcendent interest to the people and nation, were before the court or soon to come before the court for decision. Judge Dixon, in the disposition of these cases,

played no subordinate part. It was not his nature to rely on others in the examination and decision of causes. He must form his own opinions by his own study and research, master the facts of the case and the principles of law applicable to it for himself, think his way through and over whatever obstacles and difficulties were presented, by the light of his own judgment and understanding; and he always did so. He exercised great influence in all decisions made by the court. He has left an enduring record and monument of his labor and services in our reports, and without doing injustice to others I think I may say that whatever value or authority these reports may have in the estimate of the profession is largely due to his opinions published in them. What may be the value of any of these decisions as real contributions to the science of the law must abide the judgment of those who will come after us. I cannot but think that some of the opinions of Chief Justice Dixon will, while the state has a jurisprudence, be recurred to as masterly discussions of the questions before him. This is not the time or the occasion to specify any particular opinions, but I honestly believe that some of them are worthy of a place among the ablest judicial discussions.

“When standing at his open grave in yonder cemetery on the afternoon of his burial—that afternoon so calm and bright, with an air of vernal mildness rather than the chill of winter, and as the setting sun rapidly sinking in the west threw a flood of light and glory above and around the spot where we stood, with not a cloud to be seen in the sky, the whole scene in nature seemed to me a fitting emblem of the life of our friend and brother and of its close. Everything which the eye rested upon was serene and pure, beautiful and glorious; and so was his life as he dwelt and labored among us, and so it closed, leaving a name illustrious with professional fame and honor.”

Soon after Dixon became chief justice Byron Paine became a member of the court by election to succeed Judge Abram D. Smith. Judge Paine qualified June 21, 1859, and served until November 15, 1864, when he resigned to enter the military service.

## BYRON PAINE.\*

The salient features in the life of Judge Byron Paine may be briefly noted—that while still a young man, with his own future yet to care for, he faced an uncertain popular opinion and made a brave and brilliant fight for a cause that he believed to be right, in a case that has become historic; and that as a judge upon a high bench he showed such noble qualities of mind and conscience that no one can say to what promotion he might not have risen had not death laid him low almost in the beginning of his career. His memory has been guarded with reverent affection in the commonwealth he served, and no son of Wisconsin has a more honored place in her pantheon of great men than this brave advocate, obedient soldier, and unblemished judge.

The outspoken fearlessness which was one of the features of Judge Paine's character, was after the pattern of the still more outspoken courage of his father, while the moderation with which his views were urged upon others, and the calmness with which he could meet opposition, were something of which his father had small possession. The latter had spent the early years of his life in the east, had entered upon the practice of the law, and made his home at Painesville, Ohio, where Byron was born on October 10, 1827. James H. Paine had become filled with the belief that human slavery was a wrong in the sight of God, as it should be a crime in the laws of man, and as the secreting of a moral view was one of the things impossible to his nature, he vehemently and publicly denounced the involuntary servitude system of the south. It seems curious that a time should ever have been when one could be too strong an abolitionist for the western reserve of northern Ohio—the region from whence Joshua R. Giddings and B. F. Wade were afterwards sent to fight slavery in the halls of Congress—yet such the elder Paine soon found himself to be; and because of his unpopular

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\*J. H. Kennedy is the author of this sketch of Judge Paine, which appears here by permission of William W. Williams, editor of the *Magazine of Western History*, in the sixth volume of which (pages 183-196) it was originally published. The editor of this work is responsible for the notes appended to this sketch.





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course in this regard he lost practice, and was led to seek a home in the far west. In 1847 he removed to Milwaukee, where he followed the practice of his profession until his death in 1879. He continued his vehement denunciation of slavery, and it was through his example and teaching that his son was led to an early advocacy of freedom for all men, and finally to the charge of a case from which his professional career may be said to have commenced.

Byron's education was received in an academy at Painesville, and he accompanied his father to Milwaukee, where he entered upon the study of law, and was soon afterwards admitted to practice. Possessed of an unusual literary faculty, he spent some portion of his time in these early days in work upon the *Free Democrat*, one of the earliest abolition newspapers in the west. He also served as a clerk in the Wisconsin senate for one term.

In the first years of practice the young man was known to his associates as faithful and capable, but not inclined to push himself into notice, nor disposed to seek for business. He was moved more by his convictions than by his ambitions, and as likely to defend a cause because he believed it to be right as to take a case because it might be of profit. But he possessed all the capabilities for a successful advocate and a great lawyer, which should only be awakened and recognized when some fitting opportunity should present itself.

The occasion came, and the man was ready. The Glover rescue case, the trials of Sherman M. Booth that grew out of it, are a part of the history of Wisconsin, and a familiar tale to the older residents thereof; but some explanatory details will be necessary for a full understanding of Mr. Paine's connection therewith. Mr. Booth was one of the most outspoken of the opponents of slavery, and had made a name for himself in that field of labor before coming to Wisconsin in 1847, to take charge of the *American Freeman*, an abolition newspaper published under the auspices of the State Liberty Publishing Association. Joshua Glover, a black man, an alleged fugitive from an owner in Missouri, was laboring in a mill at Racine, in the spring of 1854, when the owner, one Garland, suddenly made his appearance and caused Glover's arrest. He



was hurriedly carried to Milwaukee, which was reached on March 11. Word was immediately conveyed to Mr. Booth by sympathizers of Glover, and he made such investigation as led to the discovery that the slave was then in Milwaukee jail, bruised and bloody, and carrying marks of severe treatment at the hands of his captors. When the facts became known through the efforts of Mr. Booth and others, the excitement reached fever heat, a public mass meeting was held, a vigilance committee of twenty-five appointed, and resolutions adopted declaratory of a purpose to aid the kidnapped slave by all means within their power. The result was, that before many hours had passed, a rush of many strong-armed men was made upon the jail, the negro taken out, placed in a wagon, and hurriedly driven out of the city.

Several days later Mr. Booth, as leader of the rescuing party, was arrested, and after a preliminary hearing, was held to bail in the sum of two thousand dollars, which was promptly furnished. Suit was also commenced against him for damages to the amount of two thousand dollars, the value of the escaped slave.

It would be foreign to the purpose of this sketch to follow these various suits, and all that grew out of them, to the end, and we need touch only upon such points as involve the presence and services of Byron Paine. The rescue of Glover and the arrest of Booth had attracted attention from the whole country, and had Mr. Booth desired, some of the ablest and most eminent anti-slavery lawyers of the north would have appeared in his behalf, but it was his choice that the young, and as yet almost unknown barrister who had been his associate and friend, should take up the weapon in his behalf.

Mr. Paine threw himself into the case with all the earnestness of a deep nature that had found an occupation where desire and conscience could work together. The defense of his client as he presented it to the various courts before which he appeared was masterly, original, and full of profound logic. In illustration of one curious phase of American politics at that date, it may be noted that this earnest abolitionist, in the defense of another of like belief who had violated the fugitive slave law in the rescue of a slave who had been taken under the forms of that

law, stood upon the ground of ultra state rights, and upon that line was fully abreast of Calhoun and his associates of the extreme south. And it was upon that ground that his defense was made—that the sovereign state of Wisconsin was so supreme within her own moral and legal responsibility that the legislators of the United States could not compel her citizens to surrender a slave who was such under the laws of another state. That one man should have held this view can cause no surprise, but that he should have caused the supreme court of Wisconsin to declare that his idea was good law, proves the logical character of his plea, and the eloquence and force of his argument. Another curious thing to be noted is that Wisconsin, from the first one of the strongest anti-slavery states, had a marked leaning toward states' rights doctrines, and that just before the war the republican party inclined in that direction, while the democratic was in the opposite. This idea was soon abandoned when the war showed the north what it meant when reduced to practical operation.

The case was carried into the supreme court in May. The complaint against Booth was that he had violated the seventh section of the fugitive slave act of 1850 by aiding in the rescue of Glover. After giving bail Booth had been surrendered and sued out a writ of habeas corpus to be released, chiefly on the ground of the unconstitutionality of the act. The hearing was set for the 29th, and it was upon this occasion that the young barrister made the argument that gave him fame and honor, and was the stepping-stone to high judicial honors in the future.

His speech was long, profound, and full of many evidences of deep study and earnest thought. It is regretted that only a few isolated quotations, as evidence of his method of thought and speech, can be given in this connection. In opening he said:\*

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\*The argument was made before Judge A. D. Smith, a justice of the supreme court, May 29 and 30, 1854. Charles K. Watkins appeared with Mr. Paine for the relator, and J. R. Sharpstein, United States district attorney, for the marshal. It is said that Mr. Paine's services were rendered without compensation, and that at the time his professional income was small.

In arising to commence the investigation of this case, I do so with those feelings of strong embarrassment which must naturally result from knowing that I undertake to deal with a question more important than any that could be presented to a judicial tribunal. It is a question in which, according to my judgment, are involved, not the liberties of Mr. Booth alone, but the liberties of the whole people. I am also not unaware that it might involve a conflict between the judicial powers of the state and federal government. Because the validity of a law of the United States will be called in question here. A law in relation to a subject that has lowered like a dark and gloomy cloud above our political horizon, from which have blown those winds that have tossed the public mind and heart in wild commotion, as the ocean is tossed by the storms of heaven. A law in relation to a subject that stood like a stumbling block in the way of the formation of our government, a subject that has cursed us in the past, curses us in the present, and looms up as our evil genius in the future, waiting to attend us to destruction. I need not add that we are to call in question the validity of a law in relation to American slavery. And, sir, we shall question its validity, for the reason that Congress, in passing it, transcended its constitutional power and encroached upon a right that belongs solely to the states. And this is another reason that makes the question pregnant with importance. For under our system, composed of many independent sovereignties, joined in one whole under a general government which has certain delegated powers, any question involving a conflict between the powers of the whole and of each sovereign part, must be of vital interest. It should be approached with solemnity, with anxious care, with moderation and forbearance. But, sir, in my judgment it should be approached unshrinkingly. I am not one of those who believe that the possibilities of such conflicts should be avoided by servile submission from the states. I am not one of those who believe that a state should forbear to assert its rights, for fear that it may be questioned elsewhere. I do not belong to that school, of late increasing among us, which seems to teach that the states are to look up to the department of federal government with all the submissive deference with which a serf is to listen to the commands of his master. On the contrary, I belong to the other, and as I believe, that true school, which has best studied the theory of our institutions, and which holds that the true interests and harmony and perpetuity of this Union are to be best promoted and



preserved by confining the general government strictly to the exercise of those powers delegated to it by the constitution, and steadfastly resisting all encroachments upon the rights of the states. We plant ourselves upon the doctrine of the sovereignty of the states, over all matters except those which they have delegated to the general government power to control. . . .

We stand, therefore, here to-day upon the doctrine of state rights, though we do not attempt to deny that it is a doctrine surrounded by difficulties—difficulties on both sides. As to how these difficulties are to be avoided, different men give different answers. Those whose minds incline them toward consolidation will answer that they are to be avoided by absolute submission on the part of the states. Those, on the other hand, who look with jealousy upon the federal power, will say that they are to be avoided by each carefully and scrupulously abstaining from encroachment upon the rights of others. They might say, with Judge Story, that “the part of true wisdom would seem to be to leave in every practicable direction, a wide if not an unmeasured distance between the actual exercise of the sovereignty of each.” Or they might, perhaps, rather answer as one of the great political parties of the country which has adopted the doctrines of the Virginia and Kentucky resolutions which I have read, has answered, and say that they are to be avoided by a strict construction of the constitution by all the agents and departments of the general government, and that it “is inexpedient and dangerous for Congress to exercise doubtful constitutional powers.” And now, sir, I come to the application of the doctrines I have contended for to this case. . . .

The relator, Sherman M. Booth, was complained of under the seventh section of the late act of Congress, commonly called the fugitive slave law, for aiding in the escape of one Joshua Glover, from the custody of Deputy Marshal Cotton, Glover having been arrested as a fugitive from labor. He was examined and held to bail. He was afterwards surrendered, and sued out this writ to be released from imprisonment, chiefly for the alleged reason that the act of Congress is unconstitutional and void. In appearing here, we feel that we have crossed the threshold of our last refuge. We believe that the state courts may protect us if they will. That by a wise and firm interposition of their powers in behalf of the liberties of the people, they may present a

barrier between those liberties and that spirit of oppression that is abroad in the land. That they may perform for us the kind office of the guardian shaft, that, reared above our dwellings, points fearlessly to the clouds, and receives upon itself, unscathed, the rattling thunders, that otherwise had dashed us to pieces! And our hope in this respect is justified in a degree, by the fact that we stand here at all this day, and that the United States officers are here to give account to this court concerning our imprisonment. Because it has lately been declared here, by those officers, that they would not condescend to render such account at all, and that whenever they seized upon a citizen it was little better than an impertinent interference on the part of the state tribunals to inquire of them, "Why do we so?" These doctrines fell upon the public mind like strange and unheard of signs in heaven, filling it with horror and alarm. And it is doubtless to the prompt and decided manifestation of that horror and alarm by the people, and to the resistance of our state judiciary, that we are indebted for the fact that the United States officers have receded from their position, and have appeared here to render a reason to this court why they imprison us. And we believe that the power of the court does not stop here, but that if satisfied that the reason is insufficient, it may discharge from custody the citizen whose liberty has been unjustly invaded, and thus afford a peaceful and bloodless remedy for the dangers that impend over us. But if we fail here, we can go no farther. Here is our "butt and very sea-mark of our utmost sail!" If the people are driven unprotected from their state courts, the cloud that will settle down upon them can be lifted only by the dread ordeal of revolution, when, falling back upon their reserved rights, amid scenes of violence and blood, they alter or abolish those governments that have failed to answer the great ends for which all governments are established. Since, therefore, the state is so great, we beseech this court, as we believe it has every inclination to do, to listen with attention to the reasons we may present, and with patience towards the imperfect and perhaps tedious manner in which we may present them, in order that, if possible, the last hope of liberty and the people may not fail.

I shall urge the unconstitutionality of the fugitive slave act upon three grounds:

First, that Congress had no power to legislate upon the subject at all.

Second, admitting such a power, the act is unconstitutional in pro-

viding that any person claimed as a fugitive may be reduced to a state of slavery without a trial by jury.

Third, that it is unconstitutional because it vests the judicial power of the United States in court commissioners contrary to the provisions of the constitution.

There are doubtless other good grounds of objection to this act, but I shall confine what I have to say to these three, believing that if we fail upon these, there would be no hope of succeeding upon any.

In support of these propositions Mr. Paine proceeded with an array of facts, authorities and legal deductions apparently unanswerable. In speaking of the rights of the general government and the states he said:

Thus has it been with the federal and state governments. In setting in motion the vast machinery of the new system, each endeavoring to accomplish those objects which pressed most forcibly upon its attention, they have frequently encroached upon the rights and prerogatives of each other. The encroachments have in some instances been rectified, but in others they have been acquiesced in, and the boundary lines between the two systems have been made crooked. The subject we are to consider here belongs to the latter class. And I fear this encroachment has been acquiesced in more readily than it would otherwise have been because it was imagined that it concerned only the rights of a class of people who were poor, persecuted, despised and outcast among us. But the time has now come when it concerns the liberties of us all, white as well as black, that these boundary lines should be re-examined, and the respective rights of the federal and state powers in this matter should be placed on their true basis. For the people are overshadowed with clouds of prosecutions, swarming with pains and penalties as numerous as the locusts which swarmed over Egypt; and it has become of vital interest to them to know whether the power for these things is really found in the constitution, or be nothing better than a bare-faced usurpation.

In conclusion he made use of language that, uttered years before the war of the slaveholders, seems in the light of after events to have been almost prophetic:

We are accustomed to look upon our country as having already attained a very great degree of power and importance. This is in a sense



true. But we have only to travel forward for a century or two, at the sober pace of reason, unassisted by the wings of imagination, in order to behold it bestriding this continent like a Colossus—possessing a power compared with which that it now possesses would be like the pigmy compared with the giant. Emergencies will doubtless arise in the course of its national existence that will call into being vast armies and navies. And if the general government is under the control of the slave power, these armies and navies will be under its control. And who can doubt that that power is capable of conceiving the full purpose of annihilating liberty through all these states, and extending over them its own horrible institutions? Who can doubt that after conceiving this purpose it will carry it into execution by the iron arm of military power? It will do this, not with the avowed purpose of overthrowing the constitution, but pretending that it sanctions their sacrilegious design. . . .

. . . But let us hope that this destiny may not await us! That among the inscrutable ways of Providence, some one may be opened by which this cup will pass from our lips. Let us maintain to the last some hope that liberty may not be entirely destroyed—that the cause of humanity may not entirely fail. And though the clouds are gathering faster and blacker above us, we are not altogether without reason for such hope! For a number of years past there has been another reaction going on in this country against the influence of the slave power. And though the tide has ebbed and flowed—though in the actual conflicts that power has retained possession of the battlefield, yet the reaction against it has steadily increased and accumulated strength until the present day. The freemen of the north who have long reposed in conscious strength, with a generous forbearance towards the wrongs and insults of their deadly foe, have at last become aroused by provocations that could not be borne. They are marshaling their hosts for the coming conflict between the two great antagonistical elements, liberty and slavery, that is to settle which shall finally fall before the other. The trampling of the gathering hosts is already heard—the murmuring of the rising storm is wafted upon every gale. The north is snapping asunder the bands that have bound it in subjection to the slave power, as Samson broke the withs of tow! The last link that binds it is the judicial sanction that power has received! Let that be broken and the people are free! Can it not be broken? Can this great want of the public heart not be satisfied? Can we not have one decision in all this land

that shall vindicate liberty and law? I could almost believe that the angels in heaven would bend forward over its battlements in eagerness to hear such a decision! That unborn generations would anticipate their time of life and listen from the great womb of futurity to the announcement of such a decision.

But whether these things would be so or not, this I know, that it would be received by all the friends of humanity and law throughout this land with such a thrill of heartfelt joy as was never felt by a people before. Their hearts would be filled with new hopes—hopes that this would be but the beginning of a more glorious end; hopes that there is to be a return to the true principles and wise policy of our fathers; that the constitution as it stands is to be vindicated and maintained; that courts are to be places where liberty is favored and human rights protected, and not where judges are to exercise their ingenuity to evade and overturn the great safeguards of the constitution and trample on the liberties of the people! Their hearts would be filled with new and glorious hopes, that this temple of liberty, which our fathers builded, is to be purified; that the traffickers in the blood and bones of immortal men shall be driven from its sacred precincts; and that with a broad continent for its broad foundation, and the blue heaven that bends above us for its arch, it shall be inherited by one great band of brothers, with no spot where the darkness of bondage shall remain, but that all over, from ocean to ocean, and from the eternal ice mountains of the north to the burning zone, it shall be illuminated by the light of liberty, as the celestial city is lighted by the glory of God.

The court, upon the conclusion of the arguments, agreed to Mr. Paine's construction of the law, and ordered the release of Mr. Booth; and, although he was afterwards convicted under the rulings of the supreme court of the United States, which held an opposite view, the masterly character of the young lawyer's defense was none the less admired and its wonderful strength admitted. Quoting the voice and verdict of contemporary public opinion, we are told that "he gave untiring labor, earnest zeal, and magnificent ability to the advocacy of his views, and made an argument which could not be answered upon reason, although it might be choked by weight of authority. It delighted his friends, it carried with him the court, it captivated the popular mind.

It secured judgment for his cause, and for himself the respect of his profession, and the lasting favor of the people, among whom it was extensively read. And although his opinions were very distasteful to many, they made him no enemies. His sincerity, his moderation, his fairness and evident devotion to truth disarmed opposition of personal bitterness. He obtained the confidence of his political antagonists, as well as the enthusiastic admiration of his supporters. He made no effort to secure personal advantage from his triumph, but retired to the quiet practice of his profession unaffected by the praises heaped upon him. He seemed not to know how much he had done for himself."

In this connection, and as giving support and endorsement of the highest character to what has gone before, I cannot refrain from quoting the comments upon his conduct of this case, made by Judge E. G. Ryan, when the resolutions in honor of Judge Paine's memory were presented to the supreme court in January, 1871: "When I first met Judge Paine at the bar he was still a young man, but he had already given unmistakable evidence of the power that was within him. The first opportunity I had of forming an estimate of his high ability was in the famous case under the fugitive slave act in 1854 and 1855. He was employed for the defendant, I for the United States. We both brought to the case not only ordinary professional zeal but all the prejudices of our lives. He was a frank and manly abolitionist; I was as decidedly what was called 'pro-slavery.' We were both thoroughly in earnest. The case was attended with great popular excitement. It was one of many unutterable sounds of troubled elements, foreboding the great storm which has since passed over the country. He died undoubtedly believing that the results had justified his views. I shall probably die believing that they have justified mine. I thought him a fanatic; he probably thought me one; possibly we both were. But in all that antagonism and excitement I could not fail to see, I could not fail to do justice to the integrity of his motives, or to the ability of his conduct. I then conceived an estimate of the beauty of his character, and of his great professional ability which has never since changed, and which will probably be among the last and dearest memories of my professional life. The printed brief which he submitted to



this court in that case was the ablest argument I ever met against the constitutionality of the fugitive slave act. It is a professional loss that it is not printed at length in the report of the case. It established, in my mind, his great learning and resources as a cultivated lawyer. And yet I remember well the modesty of his demeanor, accompanying such high ability in so young a man. I recall, too, his singularly able management of the defense, on the trial of the indictment in the federal court. He disputed every inch of ground with signal address, and with all the hearty ability of a man who believed that he was in the right. I shall never forget his closing argument. It has been my lot, during a long professional life, to encounter many able advocates, but I never listened to an argument before a jury more perfect for the case than that was. No man, not thoroughly able, and not thoroughly in earnest, could have made it. The court adjourned just as it was finished, and I remember well the noisy congratulations that were offered to the modest young advocate. He merited far more discriminating praise. It established his reputation as an orator and advocate of a very high order.”\*

The reputation thus generously described had placed the young lawyer so near the front rank of his profession that when Charles E. Jenkins resigned the office of county judge of Milwaukee county, in 1856, Governor Bashford appointed Mr. Paine to the vacancy. The term expired in 1857, and on the day before the election of judge he was nominated for the place by a convention hastily assembled, and to the surprise of many, and especially of himself, was elected by three thousand majority over the regular democratic nominee; and that, too, in a county that usually gave a democratic majority of over four thousand. So faithfully and intelligently were the duties of this office fulfilled that in 1859, when only thirty-two years of age, he was made a member of the supreme court of Wisconsin—a position that, with one interval of patriotic devotion to his country in another field, he held until his death.

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\*Charles Sumner, the great champion of the anti-slavery cause, wrote Mr. Paine pronouncing his argument admirable. “You touch the question to the quick,” said he. “For a long time I have seen it as you do. I congratulate you, my dear sir, upon your magnificent effort, which does honor not only to your state but to the country. That argument will live in the history of this controversy.”

Judge Paine remained upon the bench in the discharge of his duties until the call for more troops issued by the President in July, 1864, when he put into effect a long deferred desire, which had been kept from execution heretofore only because of his wish to aid his country by all means within his power in the station he then held. He resigned his judgeship and enlisted in the Union army, receiving, on August 10th, the appointment of lieutenant-colonel of the forty-third Wisconsin regiment, which had been organized pursuant to the above call. The regiment left the state on October 10th, with orders to proceed to Nashville, Tennessee. Before its departure from its Wisconsin camp Judge Paine received from his associates of the Milwaukee and Madison bars a token of the love and appreciation in which he was held in the shape of an elegant sword. In a letter accompanying it, written by Hon. Winfield Smith, attorney-general of Wisconsin, in behalf of the donors, these appreciative words were used: "In behalf of the gentlemen whose names are communicated to you, I beg that you will accept, in token of our personal regard for yourself, of our interest in your welfare, of our hearty wishes for your future success and happiness, and, not least, of our approbation of the cause upon which you have entered, the emblems of your new profession which we present with this note." The response was conveyed in a letter full of patriotism and fraternal farewell to the friends who had thus remembered him. In conclusion he said: "Looking upon the contest in this light, I have watched it with a feeling so intense that it has often unfitted me for the proper discharge of the duties of the position I have just relinquished. And when the last call was made by the President, the aspect of affairs seemed to me so doubtful and full of gloom that I could not but feel it my duty to follow where so many noble men had gone before me, and help to fill up those ranks upon which our fate now depends.

"But so far as the testimonial with which you have presented me has reference to the duties of my new position, I must say I accept it with humility and great distrust of my worthiness to receive it. I can make no promise as to how it shall be used. I can only say with a full sense of the responsibility belonging to a military command in time of

war, I desire with my whole heart to discharge properly what duties may devolve on me."

The forty-third, on arrival at Nashville, proceeded to Johnsonville, on the Tennessee river, where a large and important depot of supplies needed guarding. At that point Colonel Cobb, who had command of the regiment, was appointed post commandant, and the control of the forty-third fell entirely upon Lieutenant-Colonel Paine. The stay at Johnsonville was prolonged to November 30, during which time some sharp salutes of artillery were received from the enemy across the river. The force was moved on the 30th through an unbroken wilderness to Clarksville, on the Cumberland river, which was reached on December 4, where it was stationed until the 28th, when it was moved up the Cumberland, reaching Nashville on the evening of the same day. On January 1 the regiment was again moved to Decherd, Tennessee, where six companies went into camp, while the remaining four were detailed to guard the Elk river bridge. The command remained on provost and guard duty on the Nashville & Chattanooga railroad until June, 1865, when it was marched to Nashville and mustered out on the 24th. Colonel Paine had resigned his command some twenty days before this—but not until the war was ended and declared—because of the death of an elder brother. Of the record he made during this brief season of war, no better testimony can be found than that contained in that official publication, *Wisconsin in the War* (page 866), which says: "He was in command during most of their service, Colonel Cobb being engaged on detached duty. The soldiers were deeply affected when it was announced that he was to leave. He united kindness and firmness in discipline. It is the unanimous testimony of the officers of the regiment that never did the humblest soldier, however great his delinquency, receive from Lieutenant-Colonel Paine an unkind or ungentlemanly word. Without ostentation and with rare singleness of purpose, he devoted himself to the welfare of his regiment and the good of the service. Conceding nothing to ambition, nothing to any personal consideration, he moved straight where duty led, undeterred by censure and unmoved by ap-



plause, anxious only to be right. Rarely has the service been blessed with an officer of so pure morals and so sincere a purpose."

With his return to ways of peace, Judge Paine again settled himself at Milwaukee, and resumed the practice of law. While still preserving the quiet tenor of his way and attending to such business as he had in hand, he was enabled at this period to perform one service to the race to which he had given such patient and courageous aid, which illustrates his love of liberty and his desire to see equal right done to all men. In 1865, one Gillespie, a colored man living in Milwaukee, had offered his vote at a regular election, which had been refused. Judge Paine became once more the champion of the black man, and carried the matter into the courts. He based his right for such vote upon an election held in 1849, when a democratic legislature had submitted to a vote of the people whether or not "equal suffrage to colored people" should be granted. The result was a total of 5,265 for and 4,075 against. He claimed that the intent of the act under which the vote was taken was that the proposition must receive a majority of the votes cast on that question rather than of those cast in the general election—a construction far different from that previously accepted. The fight was carried into the supreme court, where judge Paine argued with such powerful and eloquent logic that the court sustained his opinion, and the negroes from thenceforth exercised the right of suffrage in that state.

Judge Jason Downer, of Milwaukee, who had been appointed to the supreme bench in 1864, on the resignation of Judge Paine, decided in turn to retire to private life, which purpose he carried into effect on September 11, 1867. The most appropriate choice of a successor was made when Judge Paine was asked by the governor to return to his old duties and responsibilities. He was re-elected in 1870, and was still an occupant of the bench at the time of his death. The only other public position held by him was that of professor of the law department of the state university, from 1868 to the close of his life. The university conferred upon him the degree of LL. D. in 1869.

It was while still short of the prime of life, with powers of mind that grew with each passing day and opportunity of exercise, and that had

not yet expanded to the full strength that age and experience would have given, and with a fame gaining new holds perpetually upon the love and confidence of the people, that Byron Paine was unexpectedly called upon to lay earthly cares and honors aside and go into the unknown future. He was attacked by erysipelas, which at first presaged no fatal ending, but after some weeks of pain and increasing danger the malady had reached such proportions that no hope was left. He died on January 13, 1871, at his home in Madison, leaving a mourning wife and four sons.

The announcement of his death was received with a degree of sorrow and sympathy not often accorded men filling even more responsible positions, while everywhere the feeling was apparent that one was gone who could be illy spared. Governor Fairchild in transmitting to the legislature a special message announcing his death, voiced the popular opinion when he said: "The loss of such a man to the state is almost irreparable. His eminent ability and valuable services as a jurist; his stainless integrity and devotion to duty as a judge, and his unblemished private life, endeared him to the people, and will cause him to be long remembered as one of the best men of the time in the state." The legislature adopted a joint resolution in honor of his memory, and immediately adjourned. Like action was taken by the bar of Milwaukee, by that of the state supreme court, and by other associations, and no tribute of public honor usual to such occasions was omitted. The feeling in his home city, Milwaukee, was expressed by the leading editorial utterances of the Sentinel: "On the bench his great ability has been conspicuous. Not less manifest were his even impartiality and perfect uprightness. His logical mind mastered the principles of legal science, while his industry left no precedents unexplored. It disparages no one to say that he, of all judges in Wisconsin courts, possessed in greatest measure the eminent judicial qualities. No temptation however attractive could swerve him, no personal motive draw him from the line where duty led him. We think no man ever imagined that it would be worth while to try Judge Paine's integrity. . . . The soil will cover the bodily form of Byron Paine, and hide forever all that is mortal

of that noblest work of God. His works and his good example shall live, and his memory will be green until all who know him follow him."

The writer of this sketch has conversed with many of the leading members of the Wisconsin bar concerning the life work and personal character of Judge Paine, and the unanimity with which they have recognized his purity, power and courage sets upon his career a stamp of approval that nothing can remove. The general verdict of all may be profitably summed up in the language used by one—Hon. Winfield Smith—who was an intimate personal acquaintance of the dead jurist, and had means of knowing him not open to many of his associates. "As a young man," said he, "Judge Paine was simple, almost rustic, in appearance and manners. His father and brother were more so, but Byron had a natural refinement which modified his appearance and intellect more and more as he grew older, and distinguished him conspicuously from the other male members of his family. He was about five feet ten inches in height, with solid frame and rugged features, hale, hearty, of ruddy countenance, light hair, massive forehead, of a most kind heart, pleasant temper and cheerful disposition. The logical quality was the promising feature of his intellect. The straightforwardness of his argument was its chief force, and the perfect integrity which ennobled his moral nature was also delightful to distinguish in his mental operations. He was an honest reasoner, and the strength of his faculties was such that no one who grappled with him in discussion ever afterwards underrated them. He was supposed by some lawyers at the outset of his judicial career to rely exclusively upon his own arguments, and was derided as too disrespectful of authority; but the injustice of this censure became, before long, apparent. In truth, Judge Paine was discovered by those who had to do with him to have a memory as remarkable as his power of logic; and it has been my good fortune to hear him quote the names and the facts of the individual cases which he had discovered, studied and relied upon, in cases decided by him more than a year previous. It seemed as if he never forgot the facts or the points decided in any case he once perused. His mind seemed continuously to grow and increase in strength, and prominent and able as his intellect shone



before the bar of this state at the time of his death, no one could doubt that, had he lived to the age which his splendid physique would have seemed to give him title, he would have grown to be one of the greatest of American judges. He was free from passion and prejudice beyond most men, and to him candor and simple fairness were innate. He was bound by no shackles which he needed to throw off, and his whole vigor could be readily given to the mere intellectual disposition of the judicial question before him for solution. As soon as he came to be known to the members of the state bar, there arose for him an esteem which continually increased. He had a kind heart, which displayed itself in unbroken amiability and courtesy. The strenuous discussions which he sometimes had with others, even among the colleagues on the bench, upon legal questions before them for decision, were purely of an intellectual character, and were so conducted as to enhance rather than diminish their mutual regard. It seemed impossible that he could have an enemy, and it was impossible that he should be the enemy of any man. He was not ruled by excessive passions or desires, and while clear in his views, while his opinions of right and wrong were clearly defined, while he was practical and, therefore, earnest, zealous when the consideration of great matters aroused him, yet, if thus warmed by the fire of patriotism, or by his hostility to slavery, he seemed never to be wrought up to the point of personal bitterness; and the ardor with which he discussed these questions seemed to leave behind no trace of malice."

The belief held by some that Judge Paine depended too little upon precedent and had no great respect for the opinions of jurists before his time, seems to be effectually disposed of by a consideration of his actual course in that regard. No man was more capable of understanding him as a jurist, or in describing his peculiar bias of mind as a thinker, or his course of action in the administration of the law, than Justice Cole, who sat upon the bench by his side, and has embalmed his estimate in the legal history of the state. In that memorial he has said: "The question as to Judge Paine's eminent qualifications and fitness for this position is settled finally—conclusively put to rest—by the published decisions of the supreme court. These will abundantly

vindicate, it is believed, so long as they exist, his reputation and character as an able, independent and incorruptible judge. Causes of great difficulty, magnitude and importance have come before the court while he was upon the bench, have been determined and have passed into judgments. The record is therefore made up; so far as he is concerned it can not be changed; and his judicial fame and merit may rest upon it as it is. His friends should be willing, as they doubtless are willing, to let his published opinions decide the matter. Do not these opinions show patient and careful examination; laborious research and investigation; a proper deference to authority; just discrimination of adjudged cases; a clear and firm grip of sound principles? Do they not show that he at least sought to decide causes according to the well established rules and principles of law, impartially, justly, without regard to person or party or any unworthy consideration? That he made mistakes and sometimes fell into error is no more than saying that he had the infirmity of our common human nature. It is impossible to get a just idea of his strength and ability as a judge from any one of these opinions. Those upon the true limits and principles of taxation and upon questions of constitutional law seemed most fully to call forth the resources, as they taxed most severely the powers, of his mind. Many of his opinions might be cited as fine specimens of judicial reasoning, and clear, persuasive argument. The remark was sometimes made that he was too little inclined to follow in the beaten path of the law—to stand *super antiquas vias*. If by this was implied that he had not such a blind reverence for authorities that he dare not question an unsound decision which had the support of a great name, or any number of them, the remark was undoubtedly just. He certainly had but little idolatry for mere precedents, as such, which violated correct principles. His mind was critical, but not revolutionary. He laid no violent hands upon the great systems of equity and common law jurisprudence which the great sages of the past have left us. But he realized that those systems, however wise and excellent, were still not perfect. They will bear improvement, and must at times be modified to adapt them to the wants of a highly refined society, and a new condition of things. What wise

jurist thinks otherwise? He also had a just appreciation of the responsibilities of his office. He knew that an independent, pure and intelligent judiciary was a sheet anchor of our institutions; and, as far as he could, he labored to render it all that, in this state. No one will say that the fountains of justice were polluted by him."

In his personal character, Judge Paine was frank, fearless, sympathetic and true. His life was stainless; and united to his great ability was a warm affection for those near him or dependent upon him. He was possessed of rare culture, read the German as readily as the English, and in a time of leisure accomplished the translation of a German poem in a manner showing not only a close knowledge of the German tongue but the possession of the poetic faculty in no mean degree. He read much outside of the books of his profession, and the judicial quality in his character led him to believe that there were two sides to a question, and caused him to look at the other side. This course led him to doubt, in spiritual matters, much that those about him believed, but never to scoff at or deride a faith that was not possessed by him. He was fond of nature and of outdoor sports, and with gun in hand spent many hours of leisure in the woods about Madison or Milwaukee. His life as a unit, was wholesome, true, high-minded, and given more to the service of others than the advancement of himself. There is no lack of men who can lay claim to many of the high and noble qualities possessed by Byron Paine, but there are few who hold them in so bountiful a degree, and in whom can be found so little that friendship could condemn or love desire might be cast out.

The vacancy caused by Judge Paine's resignation was filled by the appointment of Jason Downer, who served from November 15, 1864, until September 11, 1867, when he resigned, and was succeeded by Judge Paine, who was appointed by Governor Fairchild.



CHAPTER VII.  
THE SEPARATE SUPREME COURT AND ITS JUDGES.  
(Continued.)

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JASON DOWNER.

“Jason Downer was born at Sharon, Vermont, September 9, 1813. His father was a wealthy farmer, as wealth was counted in those days. He remained at the homestead farm until he was nineteen years of age. He then entered Kimball union academy at Plainfield, New Hampshire. In 1834 he entered Dartmouth college, and graduated in 1838. He soon afterwards went to Louisville, Kentucky, where he studied law and was admitted to practice. In 1842 he removed to Milwaukee. About that time the Milwaukee Sentinel was established. Mr. Downer was one of the original proprietors of the paper, and for about six months he filled the editorial chair. He retired from that position in favor of Gen. Rufus King. Thenceforth he devoted himself to the practice of the law. . . .

“In November, 1864, he was appointed an associate justice of the supreme court in place of Byron Paine, resigned, and the following spring he was elected to that position for a full term. He participated in the labors of the court until September 11, 1867, when he resigned. (His death occurred September 1, 1883, at Milwaukee.)

“His judicial career, including a brief period when he occupied the circuit bench, by appointment to fill a vacancy (in 1869), did not exceed three years. But it was long enough to establish his standing as a learned, industrious and able jurist.

“By far the greater portion of his active life was spent in the practice of law in Milwaukee county. At the Milwaukee bar his powers were formed; there they were put forth in their full vigor for more than

thirty years; there he acquired the professional distinction that led to his elevation to the bench; there he earned the greater part of his fortune. He returned to the Milwaukee bar when he laid by the judicial ermine, and he was a member of that bar down to the day of his death.

“As a lawyer he was distinguished for the extent and depth of his learning, for the soundness of his judgment, and for professional diligence and fidelity. As an advocate he was strong and convincing, whether dealing with questions of law or fact. If he lacked the eloquence and magnetism of Ryan, Arnold and Carpenter, or the ingenuity and originality of Byron Paine, the deficiency was well supplied by the soundness and extent of his learning and the clearness of his views. His arguments were seldom ornate, never florid, but always direct and to the point. As an adviser he was cautious and conservative, not given to raising false expectations, never blind to the strength of the adversary’s case, and never tempted into that wild professional partisanship so apt to injure the cause which it espouses. In short, his cases did not run away with him. He was, therefore, justly considered among the safest of advisers. It was mainly this quality that built up for him a large practice and an enviable fame. His clients felt secure in his judgment, his learning, and his industry. He was chary of promises of success, and was apt to accomplish more than he predicted.

“As a judge his record was made here. I need not say to this court that it is an honorable record. The reports of his opinions are redolent of deep learning and vigorous thought. They are models of clearness and conciseness. He was the organ of the court in the promulgation of some of its important decisions, and the court has never, I believe, been embarrassed by any looseness or redundancy in his manner of pronouncing its judgments. It is surely better that one’s style should be colorless than that it should be colored by prejudice or whim, or darkened by uncertainty.

“In his business relations his thrift and his integrity went hand in hand. He accumulated a handsome fortune, but wronged no man. In all his business ventures his caution and his enterprise were happily

balanced. He was not afraid of large and complicated undertakings, and he was not reckless or thoughtless in small and simple matters.

"It is but justice to add that although he made little public show of any non-professional attainments or accomplishments, he was in fact a ripe scholar and a diligent student of the ancient and modern classics.

"In his domestic relations it is enough to say that he was above reproach. He leaves behind him a well earned reputation for probity, diligence and ability. The disposition which he made of his large estate in his last will and testament may well serve as a model for other rich men. Without neglecting any of the claims of kindred and friends, he remembered in a munificent manner an institution of learning\* in which he felt an interest, and did not couple his gift with any of those absurd and crotchety conditions which often make such a bequest a burden rather than a help."†

In responding to the memorial of the Milwaukee bar and the address of Mr. Johnson in presenting it, Justice Cole said that the tribute of respect paid to the professional attainments and judicial character of Judge Downer seemed to him just and well deserved. He also said: "I did not know Judge Downer before I took my seat upon the bench. Indeed, I did not become intimately acquainted with him until some time after that. He was rather retiring in his habits, and it was not easy to become well acquainted with him. But when one had broken through his reserved manner, and knew him well—as I think I did—it was found that he was not the cold, unsocial being, the human icicle he was often taken to be. He possessed strong affections, active sympathies, and had great kindness of heart. From the time I first met Judge Downer, until he took his seat upon this bench, he had a large practice in this court. I understood also—and such no doubt was the fact—that he had a large and lucrative practice in the other courts of the state. It

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\*The Wisconsin Female College, formerly located at Fox Lake, now known as the Milwaukee-Downer Female College and located in Milwaukee.

†The foregoing is the substance of the address of D. H. Johnson (now Judge Johnson of the Milwaukee circuit) in presenting to the supreme court the memorial of the Milwaukee bar on the death of Judge Downer.



is entirely safe to say that for some years before I knew him, certainly after that time, he was an able and successful lawyer, recognized by the members of the Milwaukee bar as a wise counselor and one of its strong men. One who had any acquaintance with that bar twenty-five or thirty years ago, who knew its leading members, need not be reminded of what is implied in that simple statement—need not be told of the earnest effort, the continued application which a lawyer had to make to attain such a position, even when aided by the possession of strong intellectual powers. As many of the bright and remarkable men who then were numbered in its ranks have passed from earth,—beyond the reach of all flattery and praise,—I hope it will not be deemed improper or indelicate for me to add, that the Milwaukee bar twenty-five or thirty years ago was a galaxy of brilliant and eminent lawyers and advocates. It was with no little feeling of state pride that I heard, more than twenty years since, a then—as now—distinguished judge of the supreme court of the United States declare, when speaking to me about that bar, that there was no other bar in his circuit which could be compared with it in forensic ability, sound legal attainments, and genuine eloquence. It was with such rivals that Judge Downer, in his practice, came in conflict and had to measure his strength. To acquire professional distinction and win fame and success in competition with such able antagonists put in requisition great research and industry and all the resources of a well-disciplined and strong mind. But Judge Downer acquired eminence at the bar, where every day and at every step, his claim to distinction was certainly challenged, and which he could only make good by the best proof.

“He was a hard student and exclusively devoted to his profession. The prizes of political life did not excite his ambitions or have attraction for him. And he gave his whole heart and soul and energy to the study and practice of his chosen profession. They seemed to be his delight by day and his solace by night. The law is said to be a jealous mistress, who will tolerate no rival. As a rule she certainly bestows her highest favor, her brightest honors, upon those who court her most assiduously and with the most unwearied devotion. This Judge Downer did do;

consequently he became and was acknowledged to be a thorough and profound lawyer. In his arguments before this court he never indulged in any declamation or in fine speaking, but addressed the understanding and reason. His efforts were never enlivened by any flashes of wit or humor, nor embellished with any eloquent and rhetorical language. His arguments were plain, clear, forcible and learned. His manner earnest, direct,—at times, owing to the strength of his convictions, almost dogmatic. But when he closed his argument you were sure to have an exhaustive discussion of the law and facts on his side of the case, all presented in a lucid order with great clearness and force of reasoning.

“On Judge Downer’s appointment to this bench he brought into exercise the same useful and laborious habits, patient industry, and careful examination of causes, which had characterized his practice at the bar. He conscientiously investigated each case for himself and mastered all its facts. He had great respect for authority, and wished to walk in the old paths of the common law, *super antiquas vias legis*. He had a strong sense of justice, and thought the rights of parties would be most fully protected and secured by a rigid adherence to settled principles. Some thought he was too technical and did not sufficiently appreciate the necessity for new rules or the modification of old rules to meet the demands of modern society and its ever changing business relations.

“The opinions which he delivered from this bench are well described in the memorial as being distinguished for the soundness of their logic, the depth of their learning, and as safe and valuable precedents and expositions of the law. He remained upon the bench about three years, during which period he left in the published reports an enduring monument to his industry, discrimination, and exact and comprehensive learning. To say that he was honest and impartial in the discharge of his duties as judge may be faint praise, but it is true nevertheless.”

William Penn Lyon was appointed to the vacancy caused by Judge Paine’s death, and qualified as associate justice January 20, 1871.







Wm. B. Lyon

## WILLIAM P. LYON.

William Penn Lyon, formerly a justice and then chief justice of the supreme court, is the son of Isaac and Eunice (Coffin) Lyon. He was born in Chatham, Columbia county, New York, on the 28th day of October, 1822. His parents were members of the religious society of Friends (Quakers); he was brought up in that faith and still clings to its cardinal doctrines.

William attended the ordinary country district schools until eleven years of age, when he was placed as clerk in a small store kept by his father in his native town. Subsequently he attended select schools at different times, amounting in all to about one year. These were the only advantages of instruction ever enjoyed by him. But with these and a reasonable use of his leisure hours, he acquired a fair English education, including a limited knowledge of algebra, geometry and natural philosophy. He also gave some time to the Latin language. At the early age of fifteen he taught a district school; but he did not take kindly to this employment, so he engaged as clerk in a grocery store in the city of Albany, where he remained until eighteen years of age. While there he spent most of his time outside business hours in attendance upon the courts and the legislature, when in session, his tastes leading him strongly in those directions.

In 1841 he, then in his nineteenth year, emigrated with his father and family to Wisconsin, and settled in what is now the town of Lyons, Walworth county, where he resided until 1850. With the exception of two terms of school teaching he worked on a farm until the spring of 1844, when he entered the office of the late Judge George Gale, then a practicing lawyer at Elkhorn, as a law student; but before this he had read Blackstone's Commentaries, as well as those of Kent, quite thoroughly. He remained a few months with his preceptor when he returned home to work through harvest. He was soon after attacked with acute inflammation of the eyes and was, in consequence, unable to read or teach for nearly a year. That year he worked on a mill then being

built in Lyons at \$12 a month, earning \$100. In the fall of 1845 he entered the law office of the late Judge Charles M. Baker, at Geneva, as a student, and remained there until the spring of 1846, when he was admitted to the bar by the district court of Walworth county.

Having been chosen one of the justices of the peace of the town of Hudson (now Lyons), he at once opened an office there and commenced the practice of law, but in a very small way. His receipts for professional and official business the first year were \$60; the second year, \$180; the third year, \$400, and the fifth year, \$500. During the second year (1847) his income had increased so much as, in his opinion, to justify his getting married, the partner of his choice being Adelia C., daughter of the late Dr. E. E. Duncombe, of St. Thomas, Ontario, Canada. Rent and fuel and provisions in those days were cheaper than they now are, and his income proved ample for their support.

In 1850 Mr. Lyon formed a partnership with the late C. P. Barnes, of Burlington, Racine county, and moved to that place, where he remained until the spring of 1855, when he changed his residence to the city of Racine, where he continued in active practice of the law until the breaking out of the war in 1861. He was district attorney of Racine county from 1855 to 1858, inclusive. He was chosen a member of the lower house of the Wisconsin legislature of 1859, and was made speaker. It is a very unusual proceeding in a deliberative body of that high character to call one to the delicate and onerous duties of presiding officer who has not previously been a member of the legislature; but in the case of Mr. Lyon the choice was abundantly justified by the capable manner in which the duties were discharged. He was re-elected a member of the assembly the following year, and was again chosen speaker, without a contest having been made in the caucus of republican members for nomination (Mr. Lyon belonging to that political party). He retired from his second term in the legislature, at the age of thirty-eight, with the warm friendship of the members without distinction of party, with an enviable reputation throughout Wisconsin, and with the promise (which it will soon be seen has been fully realized) of an honorable and useful public career.



When the attack upon Fort Sumter aroused the north to arms, Mr. Lyon did not let his religious scruples interfere with his duty to his country. One hundred brave and determined citizens enlisted under him, and he was commissioned captain of Company K, of the eighth Wisconsin infantry, to rank from the 7th of August, 1861. The regiment to which Captain Lyon and his company were attached was organized on the 4th of September, 1861, with Robert C. Murphy, of St. Croix Falls, as its colonel. It left Madison on the 12th of October, and arrived in St. Louis on the evening of the next day. This was the famous "Eagle" regiment, so called from the circumstance of its having with it a live eagle—"Old Abe." It reached Benton barracks nine hundred and eighty-six strong. The day after its arrival it marched against the enemy. By the 12th of October the boys were in pursuit of "Jefferson Thompson," and on the 21st were near Greenville, when a desperate fight ensued. "The battle," afterward wrote Major Jefferson, of the eighth, "lasted one hour and a half, and I think it was one of the most brilliant and complete victories we have had during this war." Captain Lyon took an active part in this, the first conflict in which his regiment engaged.

After various duties having been performed by it, the eighth regiment on the 9th of May, was at Farmington, when twenty thousand of the enemy came out to attack General Pope's much smaller force. A portion of the eighth was posted in front under Major Jefferson, and soon deployed as skirmishers, only to fall back when the confederates advanced in force. The regiment, for an hour, withstood the artillery fire of the foe without support. As the enemy outnumbered the federals, and General Halleck did not wish to bring on a battle, the national troops retired to the next line in the rear, and that terminated the action.

After other important service, the regiment to which Captain Lyon belonged went into summer quarters at camp "Clear Creek," nine miles south of Corinth. On the 5th of August, while in the hospital of Iuka, Mississippi, the captain was promoted to the colonelcy of the thirteenth Wisconsin regiment. He subsequently returned home for a brief

period, and after being mustered in as commander of the regiment just named joined it in October, 1862, at Fort Henry.

On the last of October Colonel Lyon, with his regiment, embarked on steamers and proceeded to Shoditz Landing, on the Tennessee, where they joined the force under command of General T. E. G. Ransom, marching thence to Hopkinsville, to attack the confederate troops under General Morgan; but no enemy could be found. However, on the evening of the 6th of November they came up with the foe, commanded by Woodward, near Garrettsburg. After a short but severe and decisive skirmish the enemy escaped under cover of the darkness, leaving several killed and wounded on the field. Subsequently Colonel Lyon with his command returned to Fort Henry. From the 21st of December to the end of that year the regiment pursued Forrest, but returned to Fort Henry January 1, 1863. On the 3d day of February, at four in the afternoon, information was received that Fort Donelson was attacked. In half an hour Colonel Lyon had his regiment on the road, marching to reinforce the eighty-third Illinois at that important point. After driving the enemy's skirmishers five miles they arrived in the vicinity of the fort at ten in the evening, with a loss of one man wounded on the march. Meanwhile the garrison of Fort Donelson, assisted by the gunboats, had repulsed the confederates with severe loss—had in fact gained a signal victory.

During the spring and summer of 1863 Colonel Lyon's men were sent out by him on scouting duty, taking many prisoners and preventing the formation of any considerable force of guerrillas.

Participating in the forward movement of the army of the Cumberland, the thirteenth regiment left Fort Donelson on the 27th of August, reaching Stephenson, Alabama, on the 14th of September. Colonel Lyon was placed in command of that post. This was a point of considerable importance, being the depot of supplies for the whole army. The garrison was very small, provided with but little artillery, and the place was easily accessible to the cavalry of General Bragg. However, relief came in the beginning of October by the arrival of the eleventh and

twelfth corps under command of Major General Hooker from the army of the Potomac.

On the evening of the 26th of October, 1863, Colonel Lyon left Stephenson with his regiment to join the brigade to which it was attached, and went into winter quarters at Edgefield, on the Cumberland opposite Nashville, where they were employed at picket and guard duty. However, three-fourths of their number having "veteraned," the regiment left for Wisconsin on furlough, where Colonel Lyon remained five weeks and then returned to Nashville. Again, in the latter part of April, the thirteenth regiment was ordered to Stephenson and Colonel Lyon the second time placed in command of that post. In the reorganization of the army, in 1863-64, Colonel Lyon's regiment was assigned to the first brigade, fourth division of the twentieth army corps. He left Stephenson on the 6th of June and for nearly three months had his headquarters at Claysville, Alabama, guarding during that time various fords and crossings of the Tennessee river. Late in August he was ordered to Huntsville, where he arrived on the 3d of September, and was placed in charge of the railroad from Claysville to Stephenson, and was responsible for the preservation of the posts and lines of communication within his charge. Besides his own regiment he had under him several detachments of infantry, three large regiments of cavalry (a portion of which were dismounted and used as infantry), and a battery of artillery.

On the 7th of July of that year the thirteenth regiment, now a part of the third brigade, of the third division of the fourth army corps, left the Mississippi river for Texas, going afterward to camp at Green Lake on the 16th of July. Here on the 11th of September, 1865, Colonel Lyon was mustered out of the service. He was subsequently brevetted a brigadier general of United States volunteers to date from the 26th day of October of that year. The thirteenth regiment was mustered out on the 24th of November, at San Antonio, reaching Madison, Wisconsin, on the 23d of December, where, three days afterward, the men were paid off and the regiment formally disbanded.

Before Colonel Lyon was mustered out of the service he was chosen



judge of the first judicial circuit, comprising the counties of Racine, Kenosha, Walworth, Rock and Green. He entered upon the duties of that position on the 1st of December, 1865, and served for five years with a degree of ability that won unqualified commendation from all.\*

In 1866 independence day was made the occasion at the capital of Wisconsin for the formal presentation to the state of the battle flags of the several regiments which the commonwealth had sent into the field. Judge Lyon was selected to deliver an address to the governor and people on behalf of the soldiers when these flags should be given up. His oration was a masterly effort—impressive for its impassioned eloquence.

In 1870 Judge Lyon was the republican candidate for Congress in the fourth district, but was defeated at the polls by Alexander Mitchell.

The death of Byron Paine, one of the associate justices of the supreme court of Wisconsin, on the 13th of January, 1871, caused a vacancy on that bench which was filled by Governor Fairchild by the

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\*In his article on "The Supreme Court of Wisconsin," in vol. 9 of the Green Bag, p. 171, Mr. Bryant wrote as follows of Judge Lyon: He made an admirable *nisi prius* judge; and his popularity with the bar and suitors, jurymen and the public generally was matter of universal comment. His circuit embraced the counties of Racine, Kenosha, Walworth, Rock and Green, in the southeastern portion of the state. In his time the court week was an important event in the inland counties. The well-to-do farmers came in, visited, attended court, listened to the trials and arguments, and invariably took sides early in the trial. At a sharp repartee of a lawyer or a good hit-back of a witness to a badgering cross-examiner they were wont to laugh heartily, and were demonstrative to the eloquence of some gifted lawyer. Judge Lyon indulged them within reasonable limits; and his kindness on the bench, blended with dignity and judicial ability, made him immensely popular with the people. His successor on that circuit was a man in some respects entirely different. A good judge and a just, he tolerated no laughter or levity in court. If a man came in with squeaking boots, the judge would say, "Suspend! Mr. Sheriff, you will protect the court from the noise of squeaking boots." If a titter ran through the court room at some witticism, the stern tones of the judge were heard: "Suspend! Mr. Sheriff, arrest and bring to the bar all persons disturbing the proceedings by laughter." The old settlers soon found the restraint unendurable, and gave up their custom of attendance. "Judge Conger is too strict," they said. "It's a contempt in his court to sneeze or to smile. But it was mighty pleasant thar in Judge Lyon's time."

appointment of Judge Lyon to the place on the 20th of the same month. In the following April he was elected by the people for the unexpired term and for the full term succeeding. In 1877 and in 1884, he was re-elected for full terms; the last time for ten years. Judge Lyon publicly announced three years before the expiration of his last term that he did not desire and would not accept a re-election. He never wavered in his determination to retire from the bench at the close of his term, and on January, 1894, he retired from the bench, having, by reason of his seniority of service, served the last two years as chief justice.

Judge Lyon, at the earnest solicitation of the regents of the university of Wisconsin, consented, in addition to his onerous duties as one of the associate justices of the supreme court, to take upon himself the labor of lecturing before the law class of that institution. His lectures, beginning in 1871, were continued to the end of the university year in 1873. His time was given "without reward or hope thereof." On commencement day, in 1872, the university conferred upon him the honorary degree of LL. D.

The published decisions of Judge Lyon since he has occupied a position upon the bench of the supreme court run through volumes 27 to 86, inclusive, of the reports. While these are characterized for their clearness and brevity they also show a careful examination of the facts of, and just appreciation of, the law appertaining to the cases in hand.

Judge Lyon was one of the first, if not the first, justice of the supreme court to prepare a statement of the facts in each case—a task usually performed by the official reporter.

Edwin E. Bryant has very justly written that "it is but stating a truth to say that no man ever stood higher than Judge Lyon for all the qualities and equipoise of qualities that constitute the just judge. Confidence in his integrity is universal. His mind is happily constituted to see the right of the case. Calm, patient, unbiased, he brought to investigation that sincere desire to be right that opens the mind to perceive justice. His professional labors covered a period of forty-eight years. He was judge twenty-eight years, and twenty-three years on the bench of the

supreme court. His style is remarkable for its simple directness, lucidity and freedom from ornament.”†

Soon after his voluntary retirement from judicial service Judge Lyon went to California and made an extended visit with his children. Soon after returning to Wisconsin he was appointed by Governor Upham, in 1896, a member of the state board of control of charitable, penal and correctional institutions. In 1897 he was reappointed by Governor Scofield. To the discharge of the very important duties of this position Judge Lyon has brought, undiminished in degree, the same excellent judgment and painstaking care which characterized him as a legislator, soldier and judge.

He and his excellent and greatly respected wife reside in Madison, crowned with the veneration which long, useful and unselfish lives are entitled to. They have two surviving children—Clara Isabel, born in 1857, the wife of J. O. Hayes, and William Penn, Jr., of San Jose, California, born in 1861.

The next change in the membership of the court occurred June 17, 1874, when Edward G. Ryan qualified as chief justice, having been appointed by Governor Taylor to succeed Luther S. Dixon, resigned.

#### EDWARD GEORGE RYAN.\*

The late chief justice of Wisconsin—Edward George Ryan—was born at Newcastle House, in the county Meath, Ireland, on the 13th of November, 1810. He was the son of Edward Ryan and Abby Keogh Ryan. The boy was educated at Clongoe's Wood college, which he entered in 1820, completing the full course of his studies in 1827. Three years subsequent to this he came to the United States. He had made some attempts at studying law before leaving his native country.

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†9 Green Bag, 172.

\*The editor acknowledges his obligations to William W. Williams, formerly editor of *The Magazine of Western History*, for permission to use the sketch of Mr. Ryan here given. It was prepared by Consul Willshire Butterfield, formerly of Madison, Wisconsin, and originally published in vol. 5 of the magazine named. The editor is responsible for the notes.





*J. W. R.*



"I had," wrote the subject of this sketch, some years ago, "exaggerated notions of the ease with which men got on in this country, and I finally obtained my father's consent to come here. So I came in 1830. I did not know then, but have long since known, that my father expected me to fail and to return to Ireland. I was too proud to do so. I studied law in New York as I could, supporting myself by teaching. I was admitted in 1836 to practice my profession, and came that year to Chicago. Up to that time I had never known what sickness was. But I was peculiarly subject to miasmatic disease, and was in very poor health during the whole time I was in that city."

"In 1834," says T. G. Turner, "I was a boy merely and a clerk in an importing house. I boarded at Mrs. Ballard's, on Pearl street, a quite celebrated house of entertainment at that day. The late Chief Justice Ryan, of Wisconsin, some seven years my senior, boarded at the same house. I remember him as a genial, witty, able young man, addicted to 'Irish bulls,' easily imposed upon by his joke-cracking associates, but by all respected and held in high esteem. Boarding at the same house at the time mentioned was Mr. Preston, author of a book of interest tables, quite celebrated at that day, and also Gould Brown, author of the best grammar of the English language with which I am acquainted. Mr. Brown was a Quaker, a scholar and a gentleman, and his grammar will be held as authority when the names of a hundred pretenders have vanished from the list. I remember divers skirmishes between Mr. Brown and Mr. Ryan, the conclusion of all of which seemed to be that the grammarian conceded to the late chief justice the honor of using the Irish idiom correctly, but claimed that his knowledge of the English tongue was imperfect, if not ridiculous."

Mr. Ryan was one of the early journalists of Chicago. He was editor of a paper there called the Tribune, which was published in 1839, but which closed its career in 1841. It was printed by Holcomb & Company. Holcomb was the printer and Ryan was "the company" and editor. The Tribune was democratic in politics. Its editor wrote long and able articles for the paper but not always on the popular topics of the day. He gave subjects to his readers to think about rather than



for them to be simply pleased with. The paper aroused, as a consequence, but little enthusiasm, had but a limited patronage, and, as already intimated, its existence was brief.\*

In 1842 Mr. Ryan was married to Mary, eldest daughter of Captain Hugh Graham, and immediately removed to Racine, Wisconsin. He was chosen one of the fourteen delegates from that county to the convention which met in Madison in 1846 to frame a constitution for the state. He took an active and prominent part in the deliberations and debates of that body, and his ideas were stamped upon some of the important provisions of the instrument which was given to the people as the result of the deliberations of its members.† He was chairman of the committee on banks and banking, second on the committee on the judiciary, and also a member of the committee on education. When he took his seat in the convention he was a stranger to most of the able and brilliant members of that body, and when he took the floor for discussion for the first time, they were very much astonished at his power, energy and eloquence as a debater. He advocated the extreme radical features that were engrafted in the instrument agreed upon and submitted to the people of Wisconsin. But the constitution thus prepared was rejected at the polls. It was at this convention that the wonderful powers of Mr. Ryan first attracted the attention of the people of the state at large and gave him a state reputation.

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\*In 1840 and 1841 Mr. Ryan was prosecuting attorney for Cook county, in which Chicago now is. General Usher F. Linder, in his *Reminiscences of the Early Bench and Bar of Illinois*, says that his acquaintance with E. G. Ryan commenced at Vandalia in 1836-37. "He was there in attendance upon the supreme court as a lawyer, his residence being then at Chicago; and I think I may say, without giving offense to any living man, there was no man then at the bar who could claim to be his superior. Ryan is an Irishman by birth. He is a man of bad temper and tyrannical disposition. He fell out with Isaac P. Walker once at Springfield, and abused Walker in adjectives that but few men could stand, and Walker gave him a terrible flogging, which I presume he has not forgotten even to this day. Walker was a perfect Hercules in physical strength and power, and therefore it was no difficult task to administer this chastisement to Ryan."

†He made an able report designed to prohibit banks of issue and withholding from corporations the right to exercise any banking powers; he also vigorously opposed an elective judiciary, and was for permanence in the terms of judges. The stringent provisions in the proposed constitution concerning banks had much to do with the rejection of that instrument by the people.

In 1848 Mr. Ryan represented his party as a delegate in the national convention, held in Baltimore, which nominated Lewis Cass for the presidency.

Mr. Ryan lost his wife in July, 1847, and in December, 1848, he removed from Racine to Milwaukee. "When I first went to Racine," he once wrote "it seemed doubtful which would be the larger place, that or Milwaukee; that doubt was settled long before I moved." In 1880 Mr. Ryan again married; his second wife, who still survives him, was Miss Caroline Willard Pierce, of Newburyport, Massachusetts.

In Milwaukee Mr. Ryan was associated, successively, in the practice of the law, with a number of the foremost practitioners of the city. He made himself prominent as a lawyer in the city, his reputation soon extending over the state, and even beyond the boundaries of the latter, by his connection with several notable cases, particularly some murder trials. It was because of this celebrity which he had gained that he was afterwards employed in the celebrated "Hubbell impeachment case."

The sixth session of the Wisconsin legislature, under the state constitution, commenced on the 12th of January, 1853. On the 26th of the same month, William H. Wilson, of Milwaukee, preferred charges in the assembly against Levi Hubbell, judge of the second judicial circuit of the state, of divers acts of corruption and malfeasance in the discharge of the duties of his office. A resolution followed appointing a committee to report articles of impeachment, directing the members thereof to go to the senate and impeach Hubbell. Upon the trial the defendant had for his attorneys, Jonathan E. Arnold and James H. Knowlton. The managers, on the part of the assembly, employed Mr. Ryan as their counsel, who, on the 13th of June, 1853, in the senate chamber at Madison, made his opening argument. It is unnecessary in this connection to enter at all into the details concerning this remarkable trial. Mention of it is made only that the great ability of Mr. Ryan as an attorney may be thereby clearly demonstrated.

After the witnesses had all been examined, the arguments of the defendant's counsel were entered upon. Judge Hubbell was ably de-

fended. Mr. Knowlton began his remarks upon the 5th of July and occupied two days. He was then followed by Mr. Arnold who finished his address in one day. The first argument for the prosecution was made by H. T. Sanders, one of the managers, followed by Mr. Ryan who closed the case.

Upon rising to make the closing argument, Mr. Ryan asked the indulgence of the court, as he was laboring under great physical disability, and then commented upon the ground taken by counsel for defense that there was hardly a precedent for the employment of an attorney by the prosecution to manage the trial on their part. Then he added: "We have been told that the people of this state believe that not Levi Hubbell, judge of the second judicial circuit, but the prosecution in this case, are upon their trial in this cause." Then he began the fight on the skirmish line by asking: "Who are the prosecution?" and by answering: "The sovereign people of this state, in all its length and in all its breadth, as represented in their sovereign capacity upon the other side of this capitol, the assembly of this state, trusted, and trusted alone by the constitution of the state with the power of impeachment; their honorable managers representing their constitutional power and performing their constitutional duty in this court; and last and least of all, I, their humble counsel; we are upon trial, not Levi Hubbell, judge of the second judicial circuit!" "And what are we upon trial for?" he asked. "What is the charge against the sovereign majesty of the people?—That they have dared to arraign Levi Hubbell here for his judicial corruption. What are the honorable, the assembly, here upon trial for? That they have dared to call Levi Hubbell to account. What are the committee of managers, who have discharged their duty, in honor, here upon trial for? What am I here upon trial for? Who is the delinquent here by the proofs in this cause? Who is the criminal here? Whose character is upon the rack of proof? Sum up the whole of this cause, take one solid, concentrated yiew of all the truth and fact here, and tell me whose heart is stained with guilt? In whom does this evidence bare to the world a perverted mind and an unclean heart? Aye, who is upon trial here?"



"Is it," he continued, inquiringly, "that a little brief authority, is it that a little popularity, an accidental, perverted, vicious popularity, a popularity which is done and ended, lifts a criminal above accountability, prompts him to turn in vindictive threats upon his constitutional accusers, to impeach the authority of the people, the constitutional authority of the land, and turn like a dog to bite the hand that fostered, raised and fed him, when it is raised to chastise him? And are we here to fall? Yes, we cannot withstand it! A tornado of destruction is to overwhelm us! There is in God or man no salvation for us! They shall fall! That is the emphatic use made of the future tense by the counsel!"

"And what," he asked, "is this tornado—the threat was passionate and vindictive, but vague and shadowy—what is this tornado which is to overwhelm the assembly, their committee and their counsel? Is it lynch law? Is that law to arise in the land at the bidding of one of the judges of this land? Is lynch law to rise up and shelter him because he is proven to have outraged the ordained constitution and law of the land? Is it invoked here because by the spirit of no other law can he escape the judgment of his guilt? Is that the threat? Or what else is this tornado before which we must fall? Is it assassination by the bullies who surround this defendant? Is it perjury which is to follow us into his corrupt courts, with corrupt judgment following upon it to destroy us before God and man, to sweep us from the face of the earth? Or is it a tornado of opinion only? Whence does it come? Where in this broad state is that voice heard from? I will tell you, and I will tell you plainly, and I wish the counsel was in his place to hear me. It is imported here into the senate chamber from the dram-shops, the brothels and the hells of Milwaukee. That is where it comes from. It is the voice of corruption mourning for its chief. It is the voice of vice mourning for its champion."

The counsel for the defense described some judges as cold, misanthropic, unsympathizing, but declared Judge Hubbell to be of a different organization. The answer of Mr. Ryan to this was this arraignment of the defendant. "He tells us," said he, "that the defendant is of a peculiar organization; open, frank, polite, generous, confiding, social, sympathetic, anxious to conserve, seeking it where it is not

sought, too sensitive to repel approach. He tells us that repeated solicitations met his client daily in his judicial walk; and that though conscious of the wrong, he was too polite, too easy, too accessible to repel them. He tells us that his friend could not assault those who so beset him, and he would not rebuke them; in effect that he had no moral power to repel corrupting approaches and corrupting influences. That is the counsel's analysis of the character of the judge of the second judicial circuit whom he defends as his personal and judicial friend. I believe that his estimate is within the truth. A frank character that can repel no approach, rebuke no advance, resist no corruption! Mr. President, change the sex and what character has he described? Easy virtue has no sex. That character which makes a woman a wanton, makes a man an easy prostitute to every vice without a sex. Chastity of mind is as essential of men as chastity of passion is to women; and I say in bold commentary on the character given by the counsel to his client, that harlots are of both sexes and of all conditions in human life."

And he further added: "A judge of easy virtue, approaching and approached, solicited and soliciting, lending a judicial ear to whispers which tamper with judicial virtue, approaching and retreating by turns, with a rare mockery of judicial virtue on his tongue; promising to set aside verdicts, hinting the vacating of judgments, suggesting settlements for his friends, dissolving injunctions before they are issued, chambering in private with jurors in jury room, suggesting nolle prosequis to district attorneys to favor his friend's friend, who was accused of the simple impropriety, the naked indiscretion—that is the word in this cause—of adultery; divorcing women and instructing them in the principles of divorcing in sacred privacy, promising to bring on causes for trial when the proper evidence on which they were founded was lost; tampering with the penal judgments of the law; when money was payable into court, offering to receive part into his own particular pocket, instead of the whole into court, as required by law; advising suitors what course to take, in order that he might help them to accomplish their ends; so solicited, as a system by his special friends, that they cannot remember the times or the causes in which they sought

to prostitute his judicial virtue, and yet, never met with repulse; refusing to hear argument in court in order to keep his promise made in private."

Mr. Ryan, in speaking upon the admission by the defendant's counsel that the conduct of Judge Hubbell on certain occasions was only indiscretions—attributes of his peculiar character—said: "I do not know, Mr. President, but there may be characters so peculiarly constituted that crime cannot attach to them. I have heard lately, Mr. President, of moral insanity; I have learned lately of the doctrine of moral insanity, a new and pretty name for moral depravity; there may be characters so framed that crime cannot attach to them, and I suppose that this is the soul of the argument here. There may be moral obliquity which cannot see the wrong. There may be a moral organization in which right and wrong are mixed up in confused mazes without power to distinguish between them. That may be moral insanity.

"But, Mr. President, I have to say at once here, of all moral insanity, of all moral obliquity, which is set up as a defense for guilt, that such moral insanity, such moral obliquity, comes not from God, but from the abuse of the constitution which God gives to his creatures; it comes not from heaven but from the abyss. It comes from the abuse of the faculties, and is not inherent to the use of them. The disease of a faculty is insanity; the disease of a propensity is guilt. And I have to add to this defense of peculiar organization, that if it be true, as is avowed by his counsel here, that the judge of the second judicial circuit is of that character that he cannot avoid judicial impropriety, judicial indiscretion; if that is the best defense that can be made for him here, that he is of such a peculiar organization that he cannot avoid such things as are here charged and proved upon him, and is therefore not responsible, I say that the second judicial circuit has enjoyed that kind of character quite long enough and is entitled to be rid of it. That is a defense that he is so unfit for his office that he is not to be removed for the abuse of it.

"Mr. President," said Mr. Ryan, in commenting upon some of the indecent acts with which the defendant was charged, "it is said that he



who lays his hands upon a woman save in the way of kindness, is a brute. I say more: he who puts his hand upon a woman, even in kindness, save in that kindness which is authorized by the relations between them; he who lays his hands in the unauthorized instinct of sex upon a woman, insults and wrongs her. I speak not here of bestial assaults upon the sanctity of woman's person. I care not whether man's arm be thrown gently around the waist, or man's hand clasp the hand of woman; I care not what the imposition of hands may be; if it be the imposition of sex unauthorized by the relations of the parties, or the free consent of the woman first given, it is a brutal assault. It is the assault of lust upon the outworks of chastity. It is an attempt to debauch. Mr. President, God has made man strong and woman weak. Mr. President, the same God has made human society dependent on the chastity of woman, and on man's faith in it. Take chastity from woman, and family, kindred, and home become things unknown amongst men, as unknown as amongst the beasts of the wilderness. What protects society? What upholds the purity of woman, which is the life and being of woman upon this earth? Ruled by the laws of mere physical force, they walk upon the earth subjects of man's passions, as a man walking in the wilderness of Africa is the subject of the untamed appetite of the wild beasts who roam there in the supremacy of brute force. But God has given to woman a chastity of being that men worship like an idol. God making woman weak in body, has made her strong in purity; and she walks this earth with all the master strength and undisciplined passion of men about her, and yet walks and will walk this earth for all time, free and secure in her native modesty, unapproached save in honor, unsullied even in thought. That is God's charter to woman—that is her guard on earth. And the man, I care not who or what, unlicensed by any relation of legitimate affection, claiming no father's, no brother's, no son's, no husband's, no recognized and accepted lover's rights; the man who in the effrontery of passion, or the disguised approaches of passion, but raises his hand toward her, aye, but looks his lust to her, is a brute who outrages not merely her, but outrages all the sanctities of human nature in her person."

This is the manner in which Mr. Ryan defended the legal profession, while he was speaking of the charge against Judge Hubbell that he had declared to a young attorney that he must not defend a certain person in his court: "He tells the bar, by the God of Heaven! whom they shall take for clients! He tells the world that no lawyer at his bar shall hold his favor if he dare to advocate the cause of those in his displeasure. I tell you, sir (turning to the defendant), that when you dictate to the bar you do not know the bar. I am proud to say it to you, face to face, before this solemn court, that you do not know the spirit of the legal profession. You may have been of it longer than I who say it, but you have not belonged to it long enough to learn the high and honorable spirit of the profession. To dictate to an honorable young lawyer whom he shall take for his client, whose legal rights he shall assume to advocate! The legal profession has done many bad things and has produced many bad men; but it is a glorious old profession, and I love it and am proud of it. It may do in these days for demagogues to denounce it; but I say now and always, here and elsewhere, what all history proves, that there was seldom a great stride made in human progress in which the bar was not a moving power. It is an honorable profession, an independent profession. No judge has ever cowed it or broken its independence. Touch its independence and it rebels to a man, shoulder to shoulder, standing up against the invasion of its rights. A corrupt judge may disorganize it; but a tyrannical court can neither bend it nor break it. The relation of a lawyer to his client is a peculiar and important one. Life, character, liberty, prosperity, all that is dear and sacred in life, are the trust of the client to his lawyer. The world may assail; the world may persecute; death and ruin may overhang; all men may desert, but the unfortunate is secure in the zeal and loyalty of his advocate. And this is the relation the defendant tampers with; this is the profession he seeks to bend to his caprice or his ambition."

The summing up of Mr. Ryan was as follows: "There is," said he, "but one of two things for this court to do; to license this shameless prostitution of justice, or to end it at once and forever by its judgment."

There is no other alternative. You can hope nothing here from the penitence of guilt exposed; you can expect no lesson to such a defendant from such a trial, except in the judgment. Exposure and shame have no power upon a man who sees honor in his dishonor, virtue in his vice, purity in all the uncleanness of his mind, health in his rotting corruption, unshocked by all this array of guilt, any escape from justice would be a triumph to him. Honorable acquittal he cannot have, and does not hope. Any escape from judgment would send him back upon our unfortunate circuit, exulting in the self-complacency of unconvicted guilt. The parasites of corruption would cry aloud in triumph at his escape by any means. You see it in this defense. His friends, his satellites, his conscience, approve of all that is here in proof. They have not the grace to claim acquittal as a mercy; they insult the court by claiming it as justice. They ask you to send forth this defendant with all this load of unblushing guilt upon him, as the standard of judicial morality which this court is to erect in this state. They say there is here no wrong, no sin, no guilt, no impropriety, no corruption, which shocks their conscience or should reach the conscience of the court. That is their sense, that is the defendant's sense, of a system of judicial conduct, which I dare not undertake to describe in my own language. Shakespeare was a prophet. When he wrote his half inspired book, the race of prophets was not entirely gone. His language, bold and high wrought as it is, is literally true of the administration of justice in the second judicial circuit of this state, centuries after the great describer of the world had passed from the earth:

“‘I have seen corruption boil and bubble till it overrun the stew. Laws for all faults—but faults so countenanced, that the strong statutes stand like the forfeits in a barber's shop, as much in mock as mark.’

“And here is the wellspring of corruption before you. Here is the author, the minister, the father of all this corruption, pluming his feathers before you, pluming himself in the face of all this proof; spreading his feathers and strutting in the sight of the world, as a man without spot or stain, as a pure and immaculate judge.

“The assembly of the state of Wisconsin,” added Mr. Ryan, “speak-



ing here in my voice, rely upon the justice and integrity of this court. They ask you to give here true and honorable judgment, article by article, fact by fact. As I said in their name in the beginning, if innocence be here, dishonor no hair of the defendant's head. If guilt be here, suffer no one act of guilt to go unpunished, to disgrace the fair name of the state for all time. Article by article, fact by fact, give true and faithful judgment. Vindicate the holy name of public justice. Purify the temple of the law. Say to this judge at your bar: 'You are unworthy to sit at the judgment seat; you have abused, dishonored and polluted it; you have made it the seat of passion and vice and guilt; you can no longer profane it; go forth from it.'

"And if you do so, I say to you, in answer to all the threats which guilt has dared to make here to justice, to all the tornadoes of opinion which have been threatened here against all who act in bringing corruption to the constitutional judgment of the people, there will come forth throughout the length and breadth of this state a voice of honorable approbation, the echo of the pulsations of the great, honest, pure heart of this people; not insulting fallen guilt, but vindicating the judgment of truth upon crime; consecrating in the popular heart a just judgment—a judgment vindicating the majesty of the law, the majesty of truth, the majesty of right."

From these somewhat extended extracts, taken almost at random from Mr. Ryan's argument, the reader, we doubt not, will conclude with us that, for its power, its comprehensiveness and its lofty eloquence, it ranks with the greatest efforts of the kind on record.

Mr. Ryan continued his residence in Milwaukee until the period of his death, except when under the necessity of living at Madison in the discharge of his duties in the supreme court, hereafter to be more particularly mentioned.

In the early part of March, 1854, a fugitive slave case greatly excited the people of Wisconsin. A brief description of the capture of a slave named Joshua Glover, of his rescue and of the proceedings which followed, resulting in the arrest, conviction, and imprisonment of Sherman M. Booth have already been seen in Chapter II. The owner of the

slave, B. S. Garland, of Missouri, employed Mr. Ryan as attorney for the prosecution. It is needless to say that he sustained his reputation as an able lawyer, although on the unpopular side of the case.

Although an uncompromising democrat in his political faith, yet Mr. Ryan could, when occasion required, rise far above all the trammels of party into the purer atmosphere of patriotism. An example of this is furnished by his course in the celebrated case of Bashford vs. Barstow. On the 7th day of January, 1856, William A. Barstow took and subscribed an oath of office as governor of Wisconsin. But his opponent at the polls—Coles Bashford—decided to contest his right to the office. The grounds for the contest were alleged false returns made in several instances. Mr. Ryan was retained by Mr. Bashford. The case ended by the supreme court awarding the office to the latter. Ryan, with many others of his party, were indignant that one not elected should be installed in the office of governor by his party associates. As the most distinguished counsel and eloquent advocate of the party, he stepped boldly to the front, denounced the wrong and outrage in the most scathing invective, and successfully conducted the legal proceedings necessary to right the wrong and vindicate the constitution and the rights of the people of the state. His action resulted in placing a political opponent in the chief executive chair of the state; but it was a triumph of truth and right over an attempted fraud, and a vindication of the right of the people to have their voice respected. This was his chief reward.\*

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\*The chief contention on behalf of Barstow was that the question of his right to the office of governor had been conclusively settled by the state board of canvassers, and that the supreme court could not go behind the certificate of election issued pursuant to the determination of that board. It was also contended that the court had no jurisdiction of quo warranto in such a case. Ryan said: "In this world there have never been but two kinds of governments—a government of force without law, and a government of law without force. In the main, the governments of the world have been governments of force without or above law. We complain of and criticise and grumble at our system of government. The truth is, it is far above us. We are not educated up to it within a century. Here the law is the mere letter. There are no embattled armies to enforce it. It is a mere word, acting by its own vitality. How shall this system be preserved? Only by the universal submission of all men, high and low, strong and weak, the highest official as well as the humblest member of the community, to that simple letter paramount and supreme."

In 1862, when war was upon us, when military arrests at the north of southern sympathizers were frequent; and when the writ of habeas corpus, if not suspended, was at times disregarded, the democratic state convention met, and Mr. Ryan presided as chairman of a committee of four to draft an appeal to the people of Wisconsin, which is known as the "Ryan Address," which was adopted by the convention. It denounced, in the severest terms, secession and sustained the war for the suppression of the rebellion; but it attacked what it called the arbitrary acts of the administration. Public opinion was generally denunciatory at the north as to the propriety and policy of this "address."

"The defeat of the democratic party in 1860 has been followed," said Mr. Ryan, "by the revolt of several of the states from the Union, and by the present terrible civil war, because it was defeated by a secessionary party. We reprobate that revolt as unnecessary, unjustifiable, unholy. Devoted to the constitution, we invoke the vengeance of God upon

John W. Hinton, a long-time friend of Mr. Ryan's, has said in a public address on the latter that Ryan's argument in *Bashford-Barstow* case disclosed his honesty and personal superiority over party spirit or its influences; and never did a party receive a worse flagellation at the hands of a brother member than did the upholders, the aiders and abettors of the Barstow frauds receive from him. His lashings were merciless, while his indignation knew no bounds; the denunciation of those who defended those frauds was fearful; the force of his invective, the caustic character of his comments on the conspirators had never been equaled, their like had never been heard in the supreme court room or elsewhere in this state. A part of the peroration of his closing argument is given: Here we find men holding official stations privy to a well established fraud and forgery, and we are told the attempt to expose and right the wrong is a dangerous attack upon the independence and co-equality of a sovereign department of the state government. What is popular government worth if these things are to be? What is the condition of public morals in this state if such things are tolerated? It is a grievous reproach on the whole state, a bitter and terrible reproach that any man can be found to claim the meanest and lowest office—even that of fence viewer or dog killer—on such frauds as these. Office has no such charms as to counterbalance such contamination. I would rather be the tenant of any cell in any jail of this state than to hold any office, even the highest in the gift of its people—the highest in the gift of the world—on such frauds as these. I would rather surrender my citizenship—I would prefer to surrender it voluntarily—but I would surrender it, if there were no other way, by the commission of some crime—not too bad—rather than hold an office by so rotten or base a title as this. When it comes to pass that office is held on such a basis, it is an insult, a loud and crying insult to the public morality of the people of the state. What should we say of the moral sense of a people where men and women were permitted to walk



all who raise their sacrilegious hands against it, whether wearing the soft gloves of peace or the bloody gauntlets of war.

"Congress has declared," says Mr. Ryan further, "the war is waged by the government of the United States, not in the spirit of conquest or subjugation, nor for the purpose of overthrowing or interfering with the rights and institutions of the states, but to defend and maintain the supremacy of the constitution, and to preserve the Union with all the dignity, equality and rights of the several states unimpaired, and that as soon as these objects are accomplished the war ought to cease. Thus carried on, the war is not only expedient but necessary, not only justifiable but holy. It is a defensive war. It is a war of self-preservation. Disunion, once successful, would be a recurring evil, and instead of leaving a northern union and a southern confederacy, would continue its destructive career until all the states would be broken and dissevered, until the whole country would be distracted by petty sovereignties and

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naked in the public streets? It is an idea which the decent moral sense of the community will not tolerate. It would be an insult to that sense of decency to tolerate such a thing. But it is a greater insult to the moral sense of the people for a man to walk abroad, clothed with the ermine of office, stinking and rotten, and reeking with corruption and foul with vermin like this. If there be a man in the state outside of those engaged in it who sympathizes with or is ready to countenance such corruption and fraud, I am ashamed for humanity that it is so. I can conceive to what lengths political madness may carry a man, but I cannot conceive how men can consent to roll in such corruption as this. I would rather be a dog and wear an honest man's collar around my neck than do it.

Mr. Ryan was sharply criticised by prominent men in his party for appearing on behalf of Mr. Bashford in the case referred to. This roused him to an outburst of indignation, and, as he made a personal explanation, it was evident that he felt his honor impugned and assailed by the bare suspicion that he would let his party proclivities swerve him from his fealty to his client, or, that to sustain his party, he would sanction a political wrong; with that peculiar shaking of his head and a rapid movement of his right hand he said in concluding his remarks on this point: "I am a democrat. I was almost born a democrat. My appearance here on the part of a Shanghai (the republicans were called Shanghais at that time) client has led to some remarks. I am not aware that I have any general retainer from the democratic party," then pausing for a few seconds as if to fully inflate his lungs in order to give a full blast of indignant anger and send the last sentence seething hot at those before him, in an almost sepulchral tone he slowly, but with deep earnestness, said: "If to keep with my party all principle must be sacrificed, if I cannot be true to honesty, true to truth, without losing caste with my party," another pause, "then the party may go."

wasted by petty warfare. We cannot calmly contemplate disunion. We know and love the blessings of union; but no human eye can penetrate the dark and terrible future which lies beyond the grave of the constitution. The war for the preservation of the constitution has all our sympathies, all our hopes and all our energies.

"But we have a right to demand—it is our duty to demand—that this war be carried on by the government for the constitution alone, and under the constitution alone. To that end, amongst others, we retain our political organization, and will use our best efforts from time to time and at all times to regain for the democratic party, under the forms and sanctions of the constitution, the control of the legislative and executive departments of the government of the United States.

"In the meantime war must be carried on and sustained with all the energies of the United States and the people thereof. No blood or treasure is too dear a price to repurchase the Union inherited from our fathers and to transmit it unimpaired to our children."

Mr. Ryan held the responsible office of city attorney for the city of Milwaukee in 1870, 1871, and 1872. He never sought office and never held any outside of his profession, except his membership of the first constitutional convention.

"In his practice at the bar," afterward said Judge Orsamus Cole, "he was engaged in the trial of many important civil and criminal causes, and in his management of them he easily established his right to stand in the first rank of his profession. I could readily mention many an argument made by him at the bar of this (the supreme) court (of Wisconsin) since I have occupied a seat upon the bench, which seemed to me to be marked with the highest literary ability and excellence, great felicity and elegance of language, wonderful vigor and clearness of logic, all illustrated by a wealth of learning and the most comprehensive discussion and grasp of legal principles."

On the 17th of June, 1874, the office of chief justice of the supreme court of Wisconsin became vacant by the resignation of Luther S. Dixon. The vacancy was filled by the governor of the state, who appointed Mr. Ryan to fill the office until the next election. In April,

1875, Mr. Ryan was elected without opposition for the unexpired term and for the full term of six years, which if he had lived, would have expired on the first Monday of January, 1882. On receiving his commission he is reported to have remarked: "This is the summit of my ambition; this is the place to which I have looked; but it has been so delayed that I have ceased to expect it."

"He came to this great place (the office of the chief justice of Wisconsin)," afterwards said W. F. Vilas, "as every one should who is worthy to occupy it. He came in the ripeness of years and experience, after a long life of labor at the bar. He came laden with profound knowledge of the science he was to administer. He came not from an obscure corner to sit in judgment on arguments greater than his understanding; he was pushed by no skillful intrigue into a shameful reward for mere party service; but sought and taken from the topmost place of professional leadership, which by merit he had worthily won, he came fit to govern and control, where for so long he had confessedly led. He came to the judgment seat with an honorable ambition as to the crowning glory of a devoted professional life, but he came reverently, with an exalted sense of the responsibilities which he assumed, and a noble devotion of all his faculties and strength to the performance of its duties. He came to rest on no pillow of repose, but to toil and build, that he might still higher elevate the court and the law and exalt justice on earth."

As a judge, he was always patient, painstaking and industrious, listening attentively to counsel and frequently putting to them questions tending to elucidate points in discussion, and by his friendly and quiet manner, encouraging the younger members of the profession to present their views upon all points suggested. On the bench no ill-temper was ever manifested by him to check or freeze out counsel from fully presenting their points and arguing their cases.\*

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\*Justice Cole said, in response to the resolutions and addresses presented to the court in commemoration of Chief Justice Ryan that "while the chief justice had a susceptible temper, was quick in his apprehension and strong in his convictions, he was not hasty in judgment, nor was he—as is generally supposed—obstinate in his opinions, or unwilling to yield to the views of others. The privacy of the consultation



The health of Judge Ryan had been very precarious for two years before his death, and once or twice he had been, seemingly, beyond mortal aid; but for several of the last months of his life his health had been materially improved, so that he was able to attend to his official duties. On the 10th of October, 1880, he presided in the supreme court nearly the entire day. But when he left the portals of the court on that day, it was to enter them no more forever. Four days previous, in

room is justly deemed sacred. Its deliberations are not to be disclosed except for sufficient cause. It is, however, but simple justice both to the dead and living, that I refer in a few words to what transpired in the consultation room, and to the bearing of the chief justice towards his associates there. And, therefore, in order to correct a popular misapprehension upon this point, I will say that in consultation, while engaged in the labor of considering and deciding causes, the deportment of the chief justice towards his associates was uniformly kind, respectful and courteous. No irritating word, no offensive language, fell from his lips while thus employed. He often made up his mind quickly how a cause should be ruled, but he was not impatient of hesitation or opposition on the part of others. On the contrary, he listened with attention to whatever anyone had to say adverse to his views, and often readily came to their conclusion when it seemed supported by the better reason or authority. Indeed, I can say for myself, and I trust also for my associates, that I never expect or desire to be treated in consultation with more consideration and respect than was shown me by the chief justice while engaged in the work of examining and deciding causes in the consultation room. There he was the able, calm, dignified judge, freely exchanging views and discussing all questions of law and fact with the manifest desire of reaching a right result. If any disagreements ever arose between us—as was sometimes unhappily the case—they grew out of matters entirely foreign, or merely incidental, to the proper business of the court.”

Judge Cole said also: “We have from his own lips his estimate of what constituted a great and good judge. If it is not within the possibilities of human nature to reach the exalted standard he gave us, I believe he made an honest effort, in his official conduct, in the decision of causes, to come as near as he could to attaining it. He once said: ‘Summary judgment is judicial despotism. Impulsive judgment is judicial injustice. The bench symbolizes on earth the throne of divine justice. The judge sitting in judgment on it is the representative of divine justice, but has the most direct subrogation on earth of any attribute of God. In other places in life, the light of intelligence, purity, of truth, love of right, firmness of integrity, singleness of purpose, candor of judgment, are relatively essential to high beauty of character. On the the bench they are the absolute condition of duty—the condition which only can redeem judges from moral leprosy. . . . The judge who palters with justice, who is swayed by fear, favor, affection or the hope of reward, by personal influence or public opinion, prostitutes the attribute of God and sells the favor of his maker as atrociously and blasphemously as Judas did. But the light of God’s eternal truth and justice shines on the head of the just judge, and makes it visibly glorious.’ ”

taking a ride, he encountered a severe cold, the consequence of which became, day by day, more serious, and resulted in disease which baffled the skill and prescriptions of eminent and devoted physicians, and finally overcame the vigor and strength of his constitution, and in the early morning of the 19th his invisible spirit took its flight, leaving his mortal remains to the last sad offices of his numerous surviving friends.

"It is my sad duty," said Governor William E. Smith, in proclaiming, on the 19th of October, 1880, by an executive order, the death of Judge Ryan, "to announce to the people of Wisconsin that, in the mysterious providence of God, the life on earth of the Hon. Edward G. Ryan, the distinguished chief justice of our supreme court, is ended. He departed this life this morning, at about five o'clock, unexpected by his family and friends, but evidently not by himself. His great mind remained strong and serene to the last, in full comprehension of his physical condition, and in apprehension and consciousness of death, and he expressed clearly his last wishes to his family and his abiding Christian faith and hope.

"A great man, an eminent citizen and a high officer of the state, to the sore bereavement of his family and friends, and to the irreparable loss of the public service, has fallen at his post, with the spotless ermine of a great judge still upon his shoulders. Less than one week ago he presided on the bench, and the bar of the state interested in the present call of the calendar, stood before him in full confidence and hope that he would yet long remain to dignify his high judicial office by his transcendent abilities, learning and refined sense of justice. But he has suddenly disappeared from amongst the living, and the high places which once knew him will know him no more forever. For about forty years he has been especially prominent in Wisconsin and elsewhere, widely known as one of the ablest and most eminent in his profession, and in many offices of trust and honor, and he has now closed his distinguished career by making especially eminent the office of chief justice of our supreme court, to which he was called by the unanimous vote of the people. To its high and responsible duties he has devoted his great learning, the clear judgment and the developed resources of one

of the greatest minds of the age, as the mature fruits of his great experience and of his long and distinguished life. There remains no one who can in all respects fill the high place he has left vacant, and long years of time in our future history will but illustrate by memory and comparison, his unequaled abilities as a lawyer and a judge, and make still more conspicuous and indelible his impress upon the laws, politics and jurisprudence of the state.

"The people of Wisconsin will deeply lament his death and sympathize with his bereaved family and friends.

"As a mark of respect to his memory, the supreme court room will be suitably draped in mourning, the flag upon the capitol displayed at half-mast, and, on the day of the funeral, the state departments will be closed."

"Chief Justice E. G. Ryan of the Wisconsin supreme court," said the Milwaukee Sentinel of October 20th, "who died yesterday, was one of the most remarkable men the state has ever known. He played an important part in many of the notable affairs of the state, and his great genius and extensive learning challenged the admiration even of those who were sufferers by his eccentricities. Few men have possessed a more brilliant mind than that of E. G. Ryan; his unbounded fertility of resources, his command of language, his power of invective, were the wonder of the profession and the public. . . .

"As a lawyer, Judge Ryan could look upon but few equals. His keen mind grasped easily the salient points of the most complicated case, and he was able to present them clearly and effectively. . . .

When he was educated in politics men were divided by a plainer line than now; there was none of the vagueness which marks political questions in these times, and it is no more fair to judge him by the standards of to-day than the severe republicans of that time, who would be looked upon now as fanatical. He was an old school democrat to the last. . . . Of his strength, his great ability and his judicial purity there can be no difference of opinion."

The day after the death of the chief justice the Dane county (Wisconsin) bar association met and appointed pallbearers to conduct the



departed judge to Milwaukee where he was to be buried. At the place last named his death occupied the minds of the members of the bar to the exclusion of any other considerations. The courts were adjourned as a mark of respect to the deceased. The Milwaukee county bar association met and appointed committees to frame resolutions of respect to the memory of the departed and to make arrangements for fitting ceremonies at his burial. The remains, under escort of the governor (the funeral being conducted by the state), the state officers, judges of the supreme court, the Madison bar, the family of the deceased, a committee of twenty of the Milwaukee bar, and professional and other prominent citizens of Madison and various points in the state, left Madison at half past eight the next morning (October 22), for Milwaukee, where they arrived at half past eleven. The Milwaukee bar, in a body, joined the funeral cortege at the Union depot.

The funeral procession moved from the train to St. James' church where the funeral service was to be held. The casket was placed in the vestibule of the church and uncovered, so that the many old friends of the departed chief justice might view his face.

At half past twelve o'clock the short, impressive service of the Episcopal church was read by Rev. John Wilkinson, and the choir sang "Nearer My God to Thee," the casket was borne from the church to the hearse, and the funeral cortege took its way toward the Forest Home, where the lifeless form was laid down to its last resting place.

On the 9th day of November following the death of the chief justice, the supreme court of Wisconsin met, pursuant to a previous adjournment, for the purpose of taking action and making suitable record touching his decease. There were present Justices Cole, Lyon, Taylor and Orton, and a large number of the bar of the court, and of other citizens were in attendance. The court was very ably addressed by William F. Vilas, A. R. R. Butler, T. R. Hudd and James G. Jenkins. Resolutions of the Milwaukee county bar, and by the Dane county bar were presented and read. Mr. Justice Cole, in behalf of the court, made a feeling response. It was then ordered by the court that the resolutions presented, together with remarks of gentlemen accompanying the

same, be entered at length upon the record and published in the reports.

Chief Justice Ryan was five feet eleven inches in height, and when in health weighed one hundred and eighty pounds. Neither of robust nor delicate frame, he was muscular, sinewy, and capable of long continued labor. His movements were quick and his step elastic; his head projected beyond his body, giving him the appearance of stooping; it was only the appearance, however, as his body was erect. His complexion was florid, his hair light, slightly tinged with auburn, his eyes combined the mingled hues of blue, gray and black; they were large, brilliant and expressive, and, together with his complexion, indicated a sanguine, bilious temperament.

The mind of Judge Ryan was an aggregation of superior powers, harmonious and yet diverse. His prepared lectures are finished models of literary composition, while his written opinions in the reports are the perfection of rhetorical style. His extemporaneous addresses have few equals as mere exhibitions of rhetoric.

His speech was always fluent, expressive and precise; he never hesitated for a word or phrase, or used any which were not apt for the purpose. In logical strength and in that mental power of quick and searching discrimination which is the highest manifestation of a purely intellectual ability, he had few superiors. In the rhetoric of invective, and in rapid, terse and impressive argument, he possessed a power apparently exhaustless.

It is the testimony of one who knew him\* well that "the life of Judge Ryan was one long struggle—a struggle against himself, a struggle against untoward fortune, a struggle against infirmity—which the world knew but little of and allowed not for. And so, to most men he seemed

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\*James G. Jenkins. Mr. Ryan once said: "We live in a world of fractional truths, of judgments resting on fractional premises. Perhaps this is not more manifest than in our estimate of men's lives. We are prone to judge their conduct by a fixed standard, without much reference to the conditions under which they act; to exact of all like results in like positions, with little consideration for the peculiar character of each, which essentially enters into and qualifies his work. We make more (undue) allowance for the intelligence of men, forgetting that character is a greater power in life than mere intellect. Philosophically considered, ability includes character as well as intellect or knowledge."

arrogant and proud, whereas, to those who knew him best, he was, when acquit of infirmity, companionable and considerate. He possessed none of the arts of the courtier. He would neither bow subservient to power, nor be patient in the presence of wrong and oppression. Like the oak of the forest, he could break, but he could not bend.

“Power might crush him, it could not silence him. So he was often the champion of the lowly against the powerful—I think out of abhorrence of the oppressor rather than from sympathy to the oppressed. He hated the wrong more than he loved the victim of the wrong.”

“Judge Ryan’s belief in Christianity and the immortality of the soul,” says a writer in the *Milwaukee Sentinel* of October 29, 1880, “was the most prominent trait of his character. Speaking with him once on immortality, he said: ‘Man in this life may be likened to an unborn babe, who no doubt feels a dim consciousness of existence, but must be born into the world ere his vision is opened to its light and to life. So must the soul of man pass through death to that spiritual state where the clouds and the doubts of earth vanish before a clear comprehension and more quickened vision.’ Knowing him to be a firm believer in the divinity of the Savior, I once asked him what proof of Christ’s divinity could be given outside of revelation. He arose, and with an earnestness I shall never forget said: ‘About the time that Cicero, the grandest man of the Roman empire, gave to the world the labored production of his great intellect, there lived an unlettered young man in the province of Galilee, who, before he was thirty-three years old, spoke the sermon from Mount Olive. Eighteen hundred years have passed, and the inspiration of the Sermon on the Mount rules in every civilized land while Cicero’s orations find place only on a few musty shelves. If this is not divinity, then it certainly is a human miracle.’ ”

Mr. Ryan was a man of profound religious emotions. He always attended church. Mr. Asahel Finch learned at Chicago, from some of his intimates, that he was designed for the Catholic priesthood by his parents when they planned his education. He worshiped at the Episcopal churches while living in Milwaukee. He was for some years a communicant of St. John’s church. In late years he attended Christ



church, on Fourth street. He always kneeled as he entered church and assumed all the pious forms of worship. At times he read the services at Christ church in the absence of the rector.

He frequently conversed on religious subjects.\* He expressed great admiration of the apostle Peter, as a man of more energy, higher character and greater brain than the balance of the apostolic fraternity. He once took a part in one of the excited discussions in which Parson Richmond was conspicuous, and was on the side of the pugnacious clergyman. "I never so much esteem my Divine Master," he said in debate, "I never feel such a nearness to the Nazarene, as when I read that in his exalted and righteous anger he scourged the money changers with cords and drove them from the temple."

He was once arguing a case in the old supreme court room, in Madison, a trivial case, with only the judges, a half dozen lawyers, the state librarian, and a few loungers about, "audience fit though few." Some allusion in the discussion led him to refer to the Lord's prayer, and he at once launched into a most beautiful, eloquent and affecting eulogy of that form of devotion, the divine sweetness of which he described, and in radiant terms extolling the loveliness of its author. Above all, he eulogized that portion of the prayer which asks "lead us not into temptation," which he paraphrased in all the pathetic forms of which language was capable, and which he said was commended to us as a form of petition by one who knew the frailties of our nature, the attractions of guilty delight, and the strength of the impulses that lead to wrong. The few hearers listened spellbound to his matchless elo-

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\*Judge Cole, on the occasion referred to in a previous note, said that in his intercourse with the chief justice "conversation more than once has turned upon the subject of the profound mystery which shrouds man's future destiny, and we have considered together some of the arguments drawn from the analogies of nature, which are usually relied on to prove the immortality of the soul. I well remember that on one occasion he put an end to our conversation on these intensely interesting questions, by uttering with great solemnity of manner substantially this language: 'As for myself,' he said, 'I know I possess a soul—an intellectual and moral part which is immortal. I believe that I shall have a conscious personal existence after death; that I shall meet beyond the grave friends and those I loved here, that I shall know them and they will know me. All this I as firmly believe as I believe that I shall see the sunlight to-morrow if I live.'"

quence till the episode closed, when he resumed the argument of some stupid points in the dry case before him.

The moral character of the chief justice was pure and unsullied by the breath of suspicion. He had, as we have already shown, a profound reverence for the Deity, and possessed that spirit of humility and devotion to religious duty which has ever characterized the lives of the truly great.

The following incidents connected with the life of Mr. Ryan and extracts from his writings are from the pen of J. H. Kennedy, and are borrowed (with permission) from vol. 6 of the Magazine of Western History. From an appreciative article published by an acquaintance soon after his death we learn that he was severely exact in the fulfillment of minor things. Once, when a young man, an eminent lawyer of New York gave him a letter with an injunction to deliver it only into the hands of the person to whom it was addressed. Going to the house of that gentleman, the boy found that he was absent at a club dinner, and not likely to soon return. No entreaty or argument of the wife could win the document from his possession, and he remained in waiting until three o'clock in the morning, and delivered it into the proper hands. The same authority remarks: "Perhaps his most marked characteristic was strict adherence to all the rules of politeness. I have always considered him incapable of deliberate discourtesy, and am certain that he never forgave a breach of politeness. He had a horror of what is termed bluntness, and said: 'The most insulting boor always prefaces his impertinence with such expressions as to be candid with you, or, if I must speak the truth to you.' I have seen him exceedingly anxious to learn where a client was educated, and, though the person had several long interviews with him, he never found out. He would not ask a question he deemed impertinent. I was once requested to write a communication upon a public question. I consented on condition that Mr. Ryan correct it. The article was written and placed in his hands. He walked to my place the next day, fully a mile, in the hot sun, and drawing the manuscript from his pocket said, 'I have carefully read this article and approve of it, excepting one correction, which you only can

properly make.' Thinking he had found a grave error in the article, I asked him what was the correction suggested, when he pointed out the omission of the word 'and' in a sentence which, no doubt any compositor would supply, but which his keen sense of courtesy would not allow him to add. I interlined the exasperating conjunction, when he carefully took the manuscript and returned."

Another characteristic anecdote has been thus related: The quaint wisdom of the bench has never been more wittingly uttered than by the late Chief Justice Ryan of Wisconsin, in deciding that a lawyer appointed to try a case in place of a prejudiced judge had no authority, for the reason that the constitution of the state vested all judicial power in certain courts, and these could not delegate their authority. He cited a case from Hobart in point, which says: All kingdoms in this constitution are with the power of justice, both according to the rule of law and equity; both of which being in the king as sovereign were after settled in several courts, as the light being first made by God was after settled in the great bodies of the sun and the moon.

After questioning the accuracy of Hobart's "constitutional law, both celestial and terrestrial," Judge Ryan said: Taking the sun and moon according to the common acceptation and following Hobart's metaphor, the circuit judge might be likened to the sun of his court, in this cause, and Mr. Cole (the lawyer who tried the case) to the moon, after the fashion of a juridical depute in Scots' law, shining with delegated jurisdiction. But the constitution mars the comparison. For by the astronomical constitution the sun appears to take power to delegate his functions of lighting the world, while the state constitution tolerates no such delegation and appoints a sun only, without any moon, as luminary of the circuit court, whose "gladsome light of jurisprudence" must be sunshine, not moonshine.

That two such determined and vehement men as Judge Ryan and Senator Carpenter could long live together in the close and mutually dependent relations of a law partnership, without friction, is what might be safely called a natural impossibility; and yet their connection produced fewer thunderstorms than their associates of the bar expected.



One incident involved in these close business relations is told with great gusto by the lawyers of Milwaukee, but has never, so far as I can learn, seen the light of print. There was employed in their office a gentleman of good natural and mental qualities, but to whom Judge Ryan, by one of those unaccountable freaks of his temper, had taken so intense a dislike that he could not bear to see him enter the room. The clerk was more especially under the direction of Mr. Carpenter, and on one occasion, while the last named was absent in court at Beloit, he entered Judge Ryan's room, and asked him if he had any instructions to give concerning the office work.

"Yes, sir, I have," was the answer, as Judge Ryan turned to his desk and hastily wrote a few lines. Sealing the note and addressing it, he handed it to the clerk and said, "Take that to your master as soon as you can." The clerk seized his hat and coat, and, rushing to the depot, made his train just as it was moving away from the platform. Reaching Beloit in due season he rushed into the court room where Senator Carpenter was engaged in a case, and handed him the note with the explanation that it was a matter of immediate importance. Breaking the seal Mr. Carpenter read:

Milwaukee. ———, 18—.

Matt. H. Carpenter.

Dear Sir: I want you to keep your lackey out of my office.

Yours respectfully,

E. G. RYAN.

When engaged in the preparation of legal briefs or opinions Judge Ryan would walk about the room, slowly dictating each sentence, and seldom changing a word or phrase when once uttered. He was as careful in the dictation of his punctuation as his language, and so much importance did he attach to the construction of sentences, that he often said he was never satisfied of the correctness of his opinion on any legal question "until he had reduced it to the test of accurate language."

For his profession, its dignity, its honorable position in the regard of the people, its share in the administration of justice, and its claim for

due recognition on part of the other learned professions, he had the highest regard and care; and nothing would so deeply stir his wrath as a flippant or ungenerous attack upon it.

This regard held by Judge Ryan for the almost sacred commission of the law—as it appeared to him—was set forth fully in the address delivered by him before the law class of the university, on June 22, 1880.\* The power and eloquent logic of that effort can hardly be conceived by those who have not perused it. It can, in some respects, be regarded as the finest specimen ever given of his wonderful command of words, and of the riches that lay in the deep recesses of his thought. It is not merely an address for lawyers, but for all who have love of justice or a desire for truth—for all who care to hear what a master of his profession can find to say in its honor and defense. It is regretted that only a few random quotations can be given, rather than the address in full. To the young men before him he said:

I welcome you to no tranquil life, no cultured ease. I welcome you to a calling of incessant labor, high duty, and grave responsibility. If our profession be, as I believe, the most honorable, it is also the most arduous, of all secular professions. Duty is the condition of all dignity.

. . . Law in its highest sense is the will of God. . . . There is no incompleteness, no insufficiency, no casus omissus in the divine law. It needs no revision, no office of construction. From the beginning, it is always the same, with no variableness, neither shadow of turning. It is adequate to all conditions, all changes. It is all-sufficient for the government of human society. The problems of society and its troubles spring, not from insufficiency of law, but from disregard of the law. The law is adequate to all the exigencies of society, all its chances and changes; but obedience to the law is essential to the order of society.

. . . As man has labored and failed and erred in his comprehension of divine law, so has he therefore labored and blundered and miscarried his legislation. Perhaps in no other aspect in life has he more plainly manifested his slow and uncertain progress in civilization,

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\*The address was originally delivered to the graduating class of the college of law June 16, 1873; it was re-delivered on the date given in the text. It has been printed twice in pamphlet form, and there is yet a demand for copies of it.

or proved his own insufficiency for himself, his dependence on wisdom and power higher than his own. The history of human legislation is a record of error and presumption. From time to time man has established code upon code as the perfection of human wisdom; from time to time he has had to modify and to change each; from time to time code upon code has been lost in the revolution or anarchy which surely awaits all systems of legislation not founded on the divine law. . . . Young gentlemen, this is the profession which you have chosen, to the discharge of whose active duties you are this day called. This address has been in vain if you have not verified the high, arduous and responsible nature of the duties which you are assuming; if it has not made manifest our profession as the noblest and loftiest of purely human callings. There it stands, the profession of the law, sometimes disgraced by error and sin, which are the common lot of all humanity. There it stands, the profession of the law; subrogated on earth, for the angels who administer God's law in heaven. There it stands charged with the peaceful protection of every public right of the state, of every civil and religious right of the people of the state; charged with the security and order of society. . . . The law is a science. It is no mere trade. It is not the road to wealth. . . .

Of the true duty and ambition of the lawyer, he had these strong and fruitful ideas:

This is the true ambition of the lawyer: To obey God in the service of society; to fulfill His law in the order of society; to promote His order in the subordination of society to its own law, adopted under His authority; to minister to His justice by the nearest approach to it, under the municipal law, which human intelligence and conscience can accomplish. To serve man by diligent study and true counsel of the municipal law; to aid in solving the questions and guiding the business of society, according to the law; to fulfill his allotted part in protecting society and its members against wrong; in enforcing all rights and redressing all wrongs; and to answer before God and man, according to the scope of his office and duty, for the true and just administration of the municipal law.

It is impossible to give space to even a synopsis of this remarkable address, and only a sentence can be culled here and there from that



which remains—no attempt being made to give connection or due order of arrangement:

In our profession, character without high intellect is a greater power for good than intellect without high character.

The strength of a lawyer is in thorough knowledge of legal truth, in thorough devotion to legal right.

The bench symbolizes on earth the throne of divine justice.

Every good lawyer's office is a court of conciliation.

The bar does not claim to be the communion of saints. It only claims to be a noble organization of fallible men in a fallible society.

Behold the pettifogger, the blackleg of the law. He is, as his name imports, a stirrer-up of small litigation; a wet nurse of trifling grievances and quarrels. . . . He is a fraud upon the profession and the public; a lawyer among clowns and a clown among lawyers.

There is a variety of the animal, known by the classic name of shyster. This is a still lower specimen; the pettifogger pettifogged upon; a troglodyte who penetrates depths of still deeper darkness.

Judicial nepotism strangles the very life of the judicial function, deposes justice from her own bench, and seats in her place, decked in her robes and masquerading in her semblance, the harlot of profligate family interest; to cozen truth and right, property and honor; to betray all that was dear to man, or tends to make life happy or holy; to poison the very bread of life.

In the battle of life we all stumble, we are all maimed. Few, if any, lay down their arms in that battle, without sense of failure or defeat.

True progress rests absolutely in man's obedience to the law appointed for him.

Man, indeed, organized society, but God ordained it.

Without the light of revelation, man, at his best, gropes painfully in the dark, and sees dim and shadowy visions of the divine order; phantoms of truth, rather than the truth itself.

The deep undercurrent of religious thought running through Judge Ryan's nature is suggested in the above. It is also the predominant feature of a lecture delivered by him on "Heresy," in the early part of which he said:

Heresy belongs not to theology alone. The word is pregnant with

too shameful and terrible memories of wrong and suffering; the thing has played too potent and terrible a part in profane history, to be exclusively ecclesiastical. Its bloody path is tracked by fire and sword and gibbet through many Christian centuries. It has been too powerful an agent in the temporal fortunes of our race to be overlooked or unconsidered in that aspect, by priest or layman, Christian or infidel, Jew or Gentile, who tries to read history by the light of philosophy. . . . It is often said that Christianity is the great element of modern civilization. It is more. Christianity is civilization. It is the essential distinction between the ancient and modern order.

. . . The Christian revelation gave to man his great charter of freedom and immortality of the soul. It gave him a dignity and a career far beyond his mere animal being. It redeemed him from being, at his best, a polished brute. . . . Christianity has its temporal as well as its eternal uses. It not only drew the veil from eternal truth; it also revealed to man his own nature and relations in life, and founded the highest temporal philosophy. Philosophy has sometimes mistaken it for an enemy and wrestled with it. But whatever in philosophy found a real antagonist in Christianity has died the death of error.

In this lecture Judge Ryan declared it his purpose to consider his subject "in a purely historical and philosophical view;" which he did with a breadth of vision, depth of thought, and fairness of historical statement that made the address one of the greatest ever delivered from the platform. A companion lecture was that upon "Faith," which was carried along the same line of thought, and was equally remarkable for its deep and sincere recognition of the Christian religion. "Faith," he declared, "is a natural necessity as well as duty of man.

. . . The callous, gloomy, barren egotism of unbelief is not only isolation; it is, even in a purely human sense, depravity. Man does not believe in truth, because he is not true; in worth, because he is not good. The unbelieving heart is a hermit, secluded, not from the vices, but from virtues, of mankind. . . . History often seems a blind disorder of human folly, and passion, and guilt. Faith looks through the darkness, and sees the manifest finger of God, writing his law in man's capricious career. It is a dread mystery how, from that unfettered

free will for good or evil for which every soul born into time must fearfully account to him who gave it, Providence works out its own unerring ends. Man may violate the law of his being, but he cannot interrupt its operation. In his wildest apostasy, as in his most obedient faith, blindly in both, man's life is all tributary to the will of God."

Granting Judge Ryan's eloquence as a speaker and reputation as a lawyer and judge, it is needless to say that he was in great demand on the lecture platform. The genius of Dickens had scarcely given "Bleak House" to the world, and "Mrs. Jellyby" had hardly had an introduction to the American public, before his quick eye fell upon her, and the suggestion came into his mind that she might be made to pose before the people in the garb of some sharp and instructive truths. He accordingly carefully measured her, and eventually made her the subject of an oft delivered and ever welcome lecture. It was a skillful but earnest and logical reply to many claims put forward in those days by the advocates of woman suffrage. Mrs. Jellyby is used merely as a vehicle. "Her enthusiasm is singularly patient and far-seeing," is a tribute he pays that much-abused woman, in the opening portion of the lecture. "Through all the mortification of abortive missions, amidst all the cares and troubles of the present mission, in the manifold distraction and trial of her bedlam housekeeping, on the sudden disappointment of her daughter's ignoble dejection, even at the ignominious failure of Borrioboola Gha itself, she wears unruffled the calm, gentle serenity of her mind and manner, and wraps her patient dignity about her as a garment. And there is neither affectation nor effort in this. It is evidently constitutional, a manifestation of the general benignity of her character. There is nothing positively bad in Mrs. Jellyby's disposition. Her sins are all sins of omission. She is a woman of conscience, though her conscience be diseased. Think what we may of her life, to her it is a life of duty. To her own views of duty she devotes herself with untiring, uncompromising, unselfish energy. In this her portrait is distinguished in a masterly light from the group of philanthropists about her. Her integrity is unsullied by any limit of their selfish vanity. She is always earnest, always truthful. We may condemn her life, we may



rail at her doctrine; it is impossible to regard her with personal disrespect. Judged by what she is, distinguished from what she fails to do, Mrs. Jellyby has no mean claim as an amiable and upright woman."

Counting Mrs. Jellyby as "a representative woman," and "a type of the strong-minded woman," the speaker declared that "Mrs. Jellyby is no mere myth," and then proceeds with a personal application of her case to that "class of restless women of all grades of intelligence, discontented in a greater or less degree, with the position of their sex in society. With more or less dignity and force some of these have written, some spoken, some acted, and some are now writing, speaking and acting, for a reorganization of society in its relation to woman." With a strong common sense, a careful concession of justice wherever it is demanded, and a humor hinted rather than expressed, Judge Ryan then proceeded to a consideration of the claims of woman as at that day advanced. Toward the close he summed up his conclusions in the mandate that while both sexes must abide the future, woman should be educated "in the hope of that future," as "society wrongs both sexes when it denies equal education to woman." But it was in the home circle that woman's true work was to be found. "The heroes of history are not always the saints of civilization. Men write, somewhat boastingly, the biographies of the great. Angels record the lives of women like Esther. With all her sins, the world admires Mrs. Jellyby, but recoils with indignant disgust from her perverted womanhood. The world loves Esther Summerson with reverential love. This the wholesale moral of our author. These are the uses of Mrs. Jellyby!"\*

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\*Soon after his judicial duties began Judge Ryan wrote the opinion of the court on the application to admit Miss Lavinia Goodell to the bar of the supreme court, she having become a member of the Rock county bar. He said this is the first application for admission of a female to the bar of this court. "And it is just matter for congratulation that it is made in favor of a lady whose character raises no personal objection: something perhaps not always to be looked for in women who forsake the ways of their sex for the ways of ours." After discussion which led to the conclusion that there was no authority for the admission of females to the bar of any court of the state, the opinion continues: "And, with all the respect and sympathy for this lady which all men owe to all good women, we cannot regret that we do not, we cannot but think the common law wise in excluding women from the profession of the law. The profession enters largely in the well being of

Judge Ryan had also commenced a lecture on "The Reign of Mediocrity," which never progressed beyond a few pages of manuscript, which are now in existence. With two more extracts from speeches made by him upon important occasions, which illustrate his power upon themes diverse from the above, and from each other, we desist from a line of inquiry that is certainly pleasant and full of rich and abundant fruits. In his speech in the prosecution of the Radcliffe murder case in 1852, we find this compact statement of truth:

Life is the gift of God, yet one which any, however weak, may take away, but which not the united power of all men in all countries and of all times can restore. . . . It is not that we crave for the defendant's blood that we stand here. We pity him. God knows that we pity him, and those who are connected with him! But we stand here for the blood of the living. It is not for the blood of Ross, but for the blood of everyone in this hall, and in this community; it is for the blood of those yet unborn, and of all who are to live after us; it is that murder may cease, that men may reflect, pause, turn cowards before they strike down their fellow men; it is because the law of God and the law of man, and the safety and existence of society demand it, that we stand here and urge upon you a conviction of the defendant.

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society; and, to be honorably filled and safely to society, exacts the devotion of life. The law of nature destines and qualifies the female sex for the bearing and nurture of the children of our race and for the custody of the homes of the world and their maintenance in love and honor. And all life-long callings of women, inconsistent with these radical and sacred duties of their sex, as is the profession of the law, are departures from the order of nature; and when voluntary, treason against it. The cruel chances of life sometimes baffle both sexes, and may leave women free from the peculiar duties of their sex. These may need employment, and should be welcome to any not derogatory to their sex and its proprieties, or inconsistent with the good order of society. But it is public policy to provide for the sex, not for its superfluous members; and not to tempt women from the proper duties of their sex by opening to them duties peculiar to ours. There are many employments in life not unfit for female character. The profession of the law is surely not one of these. The peculiar qualities of womanhood, its gentle graces, its quick sensibility, its tender susceptibility, its purity, its delicacy, its emotional impulses, its subordination of hard reason to sympathetic feeling, are surely not qualifications for forensic strife. Nature has tempered woman as little for the judicial conflicts of the court room as for the physical conflicts of the battlefield. Womanhood is moulded for gentler and better things."

At the German Mai Fest, also in 1852, he delivered an elaborate address from which this thought is taken:

I have often thought that we in the west were a crowd rather than a community. We are no transmitted society, inheriting fellowship, bound by blood and alliance, grown up together to dwell and labor in our fathers' places. We come here in the full maturity of life and character; we meet here from all quarters of the civilized earth. Our native manners, language and habits of life, of thought and of society, act in fact as a principle of repulsion between us. We scatter into clans rather than merge in society. This is all wrong. We meet here by no accident; we are here to accomplish a great providence. The meeting in this great valley of the blood, the language, the literature, the manners, the arts, the industry of all Christendom, to mix and merge and to become the elements of a new society and the seed of a new race, under the freest institutions and on the richest soil God's sun shines upon, is no blind chance; it is a pregnant combination ordained of the Providence which watches over the nations, and guides the progress of human civilization. We are here to mix our blood in a new race of men, superior to all races because sprung from all.

The literary faculty was so strongly developed in Judge Ryan that, had he devoted himself to letters instead of the law, he undoubtedly would have won a place in the front rank of American authors. His gifts and desires lay largely in that direction. It was his purpose, had time been allowed him in the severe labors of the law, to write a law text-book and also an English grammar. His editorials in the newspaper for a time under his control were models of thought and diction. Since his death there have been discovered among his private papers the title page, preface and commencement of a story he had at one time begun to write, but had never gone beyond an opening paragraph. This suggestive fragment is here reproduced in full:

Egotisms  
of  
A Backwoods Pedagogue,  
by  
Hugh Leslie.

I turn the trouble of my countenance  
Merely upon myself. —Shakespeare.



## Preface.

I am what I profess to be, an egotist. These pages are but the written indulgence of a contemplative egotist.

If what is here written should be read, it will satisfy, if approved, it will gratify the egotist. If read and censured, egotism has its sure consolations for criticism; if neglected and unread, the thoughts in these pages will grow the stronger and clearer in the secret repetitions of conscious egotism. Anyway, the egotist is repaid for the pleasant labor of writing.

Dear reader—for reading, you are dear to the egotist—do not lightly condemn me for my candor. The philosophy of self is not always selfish. God is the great Ego, and God is love. True egotism is benevolent; true sympathy is but the reflection of benevolent egotism.

Read and judge.

H. L.

## CHAPTER I.

The red sun of the Indian summer is just sinking behind the woods. The rich tints of autumn on the trees which crown the bluff die of brighter and more varied brilliancy in the subdued and broken light which penetrates them from behind. Below, the deep shadow of the woods is on the river, here and there relieved by the sunlight which breaks through, dancing on the calm waters in tune with the gentle western breeze which plays among the tree tops. The distant hum of the town down the river is too faint to disturb the beautiful solitude in which the scene is sleeping.

Here on the yet green bank, with broad clear waters at my feet, I have come to rest after my day's labor. This is my reward for the weariness of the schoolhouse and the turmoil of the town. To be alone with nature in its beauty, while the spirit turns within upon itself in chastened contemplation, is life indeed. Solitude like this is less lonely than most society.

Society! What matters it to me here that in yonder burgh seems to be concentrated all the pretension which is the vice of all that is called society in western villages. Well, indeed, do I know that there is no family there of speculator, merchant, clergyman, lawyer, doctor or mechanic which does not look with civil condescension on the schoolmaster, because I am a schoolmaster and pretend to be nothing else,

and because neither lands nor goods attest my worth. But let me believe that I am a gentleman, in all that goes to make one, the equal of any and the superior of many of them, a voluntary exile from circles of which the good folks yonder are able to achieve only a rude imitation, and so smile serenely at the appreciation of the good society of the village of La Fontaine.

Only this, and nothing more. Not a line or word in continuation of an idyl that must have been faithful in thought, full of sound sense, and beautiful in language and expression. It certainly would have graphically described some of the social absurdities and crudities of the early and unfounded west.

Among his papers was also the rough outline of a poem of Judge Ryan's composition, which seems to have been written about the time of the loss of his first companion; and with the reproduction of which these random quotations will be brought to a close.

Ah me!  
To be  
Alone, uncared for and unaided.  
Wearing out life  
In hopeless strife,  
Heart dead, mind broken, spirit jaded.  
I know  
I owe  
Duties that might make life a treasure,  
But that my heart  
Has now no part  
In aught that can make living pleasure.  
To tread  
For bread  
Life's\* highways,  
Without one heart  
To be apart  
With mine in sweet affection's by-ways.

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\*The poem was incomplete in this line; words having been supplied and then erased.

Oh would  
 I could  
 Be off and be at rest forever!  
 In the dull grave  
 At last to have  
 The peace that life can bring back never.

Yet no  
 Ah no!  
 Heirs of my grief ye do not know yet,  
 The love that bears  
 Lone years on years,  
 For ye the calm grave to forego yet.

Mr. Bryant in his contribution to the Green Bag on the supreme court of Wisconsin, relates an incident or two of Judge Ryan: He was once arguing a cause before the supreme court of the United States. Chief Justice Chase presided, and during Ryan's argument the great chief justice turned to an associate and began a whispered conversation. Perceiving this, Ryan paused and waited until the chief justice turned as if to inquire the cause of his silence. Then Ryan said, with great dignity but significant impressiveness, "what I am saying is worth hearing." It is said that the chief justice blushed deeply, and afterwards gave perfect attention.

His sarcasm was biting, but it could be kindly. On being told that a legal acquaintance had married a fortune and obtained a fine federal appointment, he exclaimed: "God bless him! The lucky, lazy dog! He never opened his mouth but to yawn, and never opened it but a sugar-plum fell into it."

The next change in the composition of the court resulted from an amendment to the constitution increasing the number of judges from three to five, and extending the term from six to ten years. This amendment was adopted by the people November 6, 1877. In the meantime the salaries of the judges had been increased from two thousand dollars, as fixed in 1852, to two thousand five hundred dollars



in 1857, to three thousand five hundred dollars in 1867, to four thousand dollars in 1868, and to five thousand dollars in 1873. Each of these increases applied only to judges appointed or elected after the act making it took effect.

In April, 1878, David Taylor and Harlow S. Orton were elected associate justices; they qualified on the 18th of that month. From that time until the death of Chief Justice Ryan (October 19, 1880,) the court consisted of the three persons named and Judges Cole and Lyon.

#### DAVID TAYLOR.

David Taylor was born at Carlisle, Schoharie county, New York, March 11, 1818. On his father's side he was of Irish ancestry; on his mother's of Dutch descent. He was graduated from Union College in 1841, and admitted to the bar at Cobleskill, New York, in 1844, where he practiced law two years. In February, 1846, he arrived in the territory of Wisconsin, and, after looking over Milwaukee and Green Bay, determined to settle at Sheboygan. He became a member of the firm of Taylor & Hiller in July, 1846. He faithfully and acceptably discharged the duties connected with local offices, and served one term as district attorney of Sheboygan county. In 1853 he was elected to the popular branch of the legislature and in 1854 was chosen a state senator, serving in the sessions of 1855 and 1856, and was again elected to the senate after ten years' service as circuit judge, sitting in that body in 1869 and 1870. His second election as senator occurred in November, 1868, while he was circuit judge, his term as such not expiring until December 31, and his term as senator beginning on the next day. Under this state of facts and the provision of section 10, article 7, of the constitution that "Each of the judges of the supreme and circuit courts shall receive a salary, payable quarterly, of not less than one thousand five hundred dollars annually; they shall receive no fees of office or other compensation than their salaries; they shall hold no office of public trust, except a judicial office, during the time for which they are respectively elected, and all votes for either of them for any office except a judicial office, given by the legislature or the people,

shall be void," it was contended by Judge Taylor's opponent that he was ineligible and his right to a seat in the senate was contested. The question was referred to the judiciary committee, a majority of which reported that they were of the opinion that the last clause of the section quoted "was only intended to give force to the prohibition contained in the first clause, and not to add a new or further prohibition, and that its effect is the same as though it read 'and all votes given for either of them for any office to be held during the term of his judicial office, shall be void.' " This view was sustained by a vote of eighteen against eight.

A. M. Blair has said of Judge Taylor as a legislator that "he was quiet, careful and attentive, looking up all questions thoroughly; never aggressive, never in search of new ways to pay old debts, but looking after defects in the old law and devising a new way to make the old better, instead of taking a new way to accomplish the same thing. He endeavored to understand everything, and to favor nothing he did not understand. He was not a brilliant member of either house. In his first session his merits were not appreciated or perhaps not perceived. The first and third sessions of the legislature in which he served were active and stirring ones. In the first a trial by impeachment of Judge Hubbell was held, and in the third there was during its session a trial to ascertain who was the legal governor. The deceased took no special part in either."

Judge Taylor's judicial career began in 1857 on his appointment by Governor Bashford to the judgeship of the fourth circuit to fill the vacancy occasioned by the resignation of Judge William R. Gorsline. He was elected to fill the unexpired portion of the term, and upon its expiration was chosen for a full term, thus extending his service as circuit judge until January 1, 1869, having failed of re-election the previous April. Campbell McLean was his successor. The memorial of the bar of the supreme court, prepared by W. H. Seaman, S. U. Pinney, W. C. Silverthorn, F. C. Winkler and Elihu Colman, expressed that during his service on the circuit bench Judge Taylor earned wide reputation for judicial ability.

On his retirement from the bench Judge Taylor resumed the practice of the law at Sheboygan, remaining there until 1872, when he removed to Fond du Lac, and entered into partnership with J. M. Gillet and subsequently with George E. Sutherland. His practice was large and increased up to the time of his election as associate justice of the supreme court.

In 1857 the legislature provided for the appointment of commissioners "to collect, compile and digest the general laws of the state" for publication. The governor appointed David Taylor, Samuel J. Todd and F. S. Lovell to perform that work. The result was the revised statutes of 1858. By 1871 Judge Taylor had prepared and there was published "The revised statutes of the state of Wisconsin, as altered and amended by subsequent legislation; together with the unrepealed statutes of a general nature passed from the time of the revision of 1858 to the close of the legislature of 1871, arranged in the same manner as the statutes of 1858; with references showing the time of the enactment of each section, and also references to judicial decisions in relation to and explanatory of the statutes." The preparation of this work (there being two volumes, aggregating more than two thousand two hundred pages) was a great undertaking, requiring patient industry and the closest application. These statutes came into general use and were known as "Taylor's Statutes." They were so satisfactory to the bench and bar that when, in 1875, the legislature provided for a new revision of the statutes Judge Taylor, with William F. Vilas and J. P. C. Cottrill, was designated by the justices of the supreme court to prepare a bill for that purpose. The result of the labors of these gentlemen and Messrs. Harlow S. Orton and J. H. Carpenter, who, two years later, were selected to assist them, was the revised statutes of 1878. Judge Taylor served as the president of this commission.

In 1877 an amendment to the constitution was adopted increasing the number of justices of the supreme court from three to five. By an understanding reached between the republican and democratic members of the legislature the additional members of the court thus provided for were to be taken one from each of these parties; and a caucus of



each party was held by the members of the legislature for the purpose of selecting the candidates of each. The republican caucus, by a very close vote, chose Judge Taylor as its candidate, the leading candidate in opposition to him being William E. Carter, then of the Grant county bar, now a practitioner in Milwaukee. In April, 1878, Judge Taylor was elected without opposition as an associate justice of the supreme court, and drew the short term of eight years, Harlow S. Orton drawing the ten-year term. Both sat on the bench of the supreme court for the first time April 18, 1878. At the expiration of his term Judge Taylor was re-elected without opposition for the ten years ending in January, 1896. His first written opinion is reported on page 49 of the 44th volume Wisconsin reports, and his last in volume 79, p. 471; so that his labors in the supreme court are represented by thirty-six volumes of its reports. He prosecuted his labors almost without interruption up to the third of April, 1891, without any diminution of his powers, and in the afternoon of that day, after working as was his wont, went to his home and within an hour or so was dead.

On the third of June, 1891, formal proceedings were had in the supreme court in commemoration of the life of Judge Taylor. Addresses were made by W. H. Seaman, who presented the memorial of the bar of that court, William F. Vilas, A. M. Blair and Charles E. Estabrook. The following is the address of Mr. Vilas:

"May it please the court:—I would lay upon the grave of the departed a garland of personal remembrance and regard; and I wish I might contribute some aid to the true estimation of his character and excellence by such as lacked the advantage of intimate association to understand him fully.

"Upon the retrospective glance over all his long, laborious, useful and blameless life, no shadow of evil falls. Research and inquiry will discover only constant devotion; unostentatious but excellent works; steadfast, patient, valuable service to his profession and society; a man not only without display but without the least attempt to shine, but one never failing in robust, healthful usefulness in his station and all the undertakings of his life.

“Yet to the world at large, and indeed to very many, perhaps most of those with whom he came in casual contact, Judge Taylor wore a seeming of unsocial reserve, which limited intercourse and acquaintance and often wrought a misconception of his nature. Touched myself, in some measure, by this erroneous view of him in the earlier years of acquaintance, our enforced intimate association as collaborators during three years of the last revision of the statutes brought him out to me in clear light, and disclosed not only the freedom of his mind from anything like false pride or want of sympathy with men, but those excellent features of ability and character which ever after have commanded my cordial respect and esteem.

“And now, reverently meditating on the spirit which has gone from his clay, the warm desire that his memory may be preserved by the profession and people of the state with discriminating appreciation and justice, directs my thought to those characteristics which ruled the conduct of his life, and a knowledge of which is essential to the proper measure of his worth.

“Judge Taylor’s most distinguished peculiarity, which governed and explained his career, his general conduct and manners as well as accomplishments, was the constancy and intensity of his devotion to the labors of the law. No man within my range of observation ever gave himself more exclusively, so unceasingly and untiringly, to this single field of thought and effort. Whatever other studies may have engaged his care, if any ever did for much time, he manifested in his later years little interest in them. Beyond a passing attention to the current affairs of the country and topics of the day, of which information came easily, he never seemed to yield himself or his thoughts at any length.

“But to the law he addressed a capacity for labor unexcelled and rarely equaled, with a constancy as faithful as his capacity was great. He seemed never weary, never wistful to interrupt the calm, steady, unremitting assiduity of his toil. The magnitude of effort to understand or elucidate any subject under his hand, the measure of time or personal labor, was no consideration with him. No task was formidable to his simple steadfastness. Through all the hours of the day, day after

day, week in and week out, year upon year, without excitement and without ceasing, he bent his mind to the tasks before him, toiling on with each to its complete and satisfactory accomplishment, and entering upon the next as readily as he finished that in hand. Relaxation and recreation were nothing to him. Seemingly he never desired either; holidays and vacations were merely interruptions. The pleasures and enjoyments which others indulge and seek, games, pastimes, entertainments, had no apparent charm; and if he suffered them even to check his labor, it was rather from a consideration of others than to please himself. He was, therefore, essentially a contemplative man, his mind ever meditating his problem, the intellectual machinery always running, always grinding its grist. His thought was ever introverted; his attention occupied by that within him, not by things without. Incidents external were rather a hindrance than a help; interruptions, not attractions.

“Necessarily, his were the manners of a preoccupied man. Yet such was his composure of countenance that his introspection was commonly not apparent to the ordinary observer, and when he passed with slight notice a friend or acquaintance, it happened not infrequently that the reason for it was denied the credit due. But it needed only to enter the chambers of his mind and witness the busy scene within, to understand the subjects and the methods of his thought, in order to dissipate utterly the superficial misconception. Once in appreciative communion with him, the perception was instant and easy of simplicity and sincerity of purpose, of patient effort to discern and unfold the right, of sympathy with the interests and concerns of men, and the utmost readiness to accept any aid or criticism which helped him to solution of the doubt he wrestled with or unfolded the true course of thought. Any man more free of the mere pride of personal opinion, less impatient of correction, more ready to receive any benefit of another’s thought, so that it truly informed his own, I never encountered. In performance of the public duty already mentioned—to which we were called by appointment of this court—it so happened that he and I wrought much together, in a close co-operation, not only on important



measures of the law, but often upon words and phrases, those stubborn substantives of useful statutes. He was the old, well-stored lawyer, surcharged with a life of study, long professional and judicial service, and especially expert in statutory knowledge, as one of the revisers of twenty years before and the compiler of a later edition which had long superseded in use the former work. He brought to the undertaking not only his extraordinary ability for labor, but unusual fulness of legal learning and ripeness of study. Yet the just precedence of these circumstances he never manifested in anything but their value to the duty before us. In every moment of conference his acceptance was as free and easy as his contribution, of everything in every form, whether of suggestion or of criticism, that might promote the utility and excellence of the work in hand. I speak now to his associates of many years in judicial labor; but confidently, that your testimony may be invoked to superadd in more effective tones the proof of these marks of a just, strong, honest-minded man, too great and too generous, too simple and too true, to think of anything but the worthy end of legal labor in its highest usefulness to men.

“He ardently loved justice and surely yearned to see justice done in every cause. His anxious care for this is manifest in every opinion he wrote. It was a virtue that, taken with his untiring assiduity and his disregard of personal seeming, wrought with him some vice of manner and of aim. It exposed his opinions sometimes to criticism for their length, though not for their substance. There was perhaps now and then a fault, but an inconsiderable one, for which he rather accepted reprehension than incur the risk of error by too much compression.

“And I have thought he missed sometimes, in his ardor for the seeming equity of the case, the highest aim of a judge upon this supreme tribunal of the state, whose true function it much more surely is to rule and maintain the law with comprehensive wisdom and unfailing steadfastness for the guidance of the whole people, those out of court as well as those before it, than merely to give to suitors a Solomonic resolution of each particular controversy.

“But this occasion affords no latitude for the suitable portrayal of

the character and services of the man or the judge who is gone. Summarily, it must be said that a career of conspicuously valuable service to the state has been closed by his loss. Though he may not rank as a great or brilliant man, Judge Taylor deserves to be long remembered as an unusually good, useful and serviceable lawyer and judge, who was perhaps of more real advantage to his time and his kind than if he had been a greater one, as the world reckons greatness. That lack of whatever it may have been which excites the admiration, that calls a man great, he made up in accomplishment by his faithful and enduring toil, and not only became greatly learned in the law and wise in judgment, but put his learning and his skill, by industry that never tired, into forms of value to his fellowmen.

"And Heaven vouchsafed him an end befitting his life. No idle years of inanè waiting, no sinking by disuse in slow mortal decay. But while still in the strength of manhood, without lingering pain or burdensome contemplation of the coming changes after that full day's toil which was his wont and joy, he was called to his rest as the laborer, retiring home at night, seeks the repose of Nature in reward of honest doing.

"May his ashes lie in hallowed peace, and the bar and people whom he served keep his memory in deserved honor."

Chief Justice Cole said in response to the memorial and addresses:

"The sudden death of Judge Taylor, of which the memorial and resolutions of the bar just presented to the court make mention, produced throughout the state, when announced, a feeling of deep and sincere sorrow. He was apparently in the enjoyment of perfect health and in the full possession of all his mental powers when he left his desk, on the third of April last, after his work for the day was done, and went to his home in this city, and within the brief period of an hour was dead. A death so unexpected of one who occupied his responsible position and who was so eminent, able and just in the discharge of his official duties, was well calculated to shock the public mind, as it did, and impress all with a sense of the great loss the state had sustained by his removal from earth. And this sense of loss has rather been increased than

weakened as the sad event has been considered by all thoughtful citizens. Indeed, the death of Judge Taylor, occurring as it did, would be regarded as a public calamity in any state or community. He was cut off in the midst of his great usefulness, when his services were as valuable and important as they ever were to the people of the state.

“He was as conscientious and faithful a judge as ever occupied the bench in any country at any time; and all know how with heart and soul he endeavored to do his entire duty in his office. He was universally respected and admired for his pure life, his integrity of character, his independence and tireless industry. To him severe mental labor seemed to be a joy and delight. He certainly never shrank from any, however toilsome. There is probably not a member of the bar, perhaps few citizens of our state, who do not know of the laborious habits, the complete devotion to duty, which marked his life. And in him, too, the love of justice was almost a passion and controlled his whole conduct. He strove to do right and to render exact justice to all, regardless of all personal considerations. This spirit is manifested in all his opinions. He was patient, careful, and thorough in the examination of causes, solicitous to master every fact and circumstance, and evinced an unconquerable purpose to decide them upon the merits, according to principles of law and equity. He had no fondness for technicalities, and pushed them aside when they stood in the way of doing substantial justice. His mind was practical and solid rather than brilliant, and he sought to adapt legal principles to business affairs and the condition of society in our state. There is nothing eccentric or visionary in the views which he took of all questions, and he eminently was

“ ‘Rich in saving common sense.’

“He possessed, as he deserved, in a high degree the confidence and respect of the people of the state, who well knew his great worth of character as manifested in many ways. To his brethren in the consultation room his loss is irreparable, for his place cannot be made good by anyone. He was so careful and exhaustive in his investigations, was



actuated by such a strong love of justice and right, was so anxious to apply correct principles to every case, so able to unravel the most difficult subject, united with a manner of stating his conclusions with clearness and freedom, that he was listened to with increasing respect in all our deliberations. Besides, his assistance in the decision of cases was especially helpful because he had practically aided in making three revisions of the general statutes, that of 1858 and that of 1878, also publishing his own revision in 1871 (for that is what it amounted to), in which he pointed out the changes that had been made from time to time by the legislature. It is therefore but simple truth to say that there is probably no man in the state whose knowledge of the local law could be compared with his for fullness and accuracy. And this great familiarity with the statutes enabled him, as one will readily understand, to render most invaluable aid in considering and deciding cases, so many of which turn upon the meaning or construction of a private statute or a general provision of law.

"It is needless to say that Judge Taylor came to this bench amply prepared for the work which he had to do. His diligent professional studies and his experience on the bench of the circuit court had stored his mind with the principles of jurisprudence, and he had acquired the ability to apply them to legal controversies. His knowledge of the law was profound, and he was justly considered one of our ablest judges. This is not the time to speak of the value or the merits of his published opinions. But it is safe to affirm that no one can read them without being impressed with the wealth of learning and research as well as the vigor of reasoning which mark them.

"We close this imperfect tribute to his memory with the remark that an able judge, a patriotic citizen, a good man, has closed a life of singular purity and usefulness, leaving behind an untarnished reputation and an example which all may imitate."

#### HARLOW S. ORTON.

The birthplace of Harlow S. Orton was in Niagara county, New York; the time November 23, 1817. His father, Harlow N. Orton, M.

D., was a native of Vermont, and his mother, Grace Orton, nee Marsh, was born in Connecticut. His paternal ancestors migrated from England in the middle of the eighteenth century, and his maternal progenitors were of the early Puritans of New England. The members of both branches of the family were enlisted in the service of the revolutionary war. Both of his grandfathers were Baptist clergymen, who shouldered muskets and fought for liberty and independence.

Judge Orton was educated first at the common schools, and later at the Hamilton academy and Madison university in his native state, receiving at the latter institution his degree of graduation. Upon leaving the university he became a school teacher in Kentucky, and while thus engaged, in 1837, began the study of law. In the same year he left Kentucky to join his brother, Myron H. Orton, late of Madison but now deceased, who was then practicing law in La Porte, Indiana. At that place, in 1838, he was admitted to the bar, and began to practice in the northern Indiana circuit. He became deeply interested in the political campaign of the year 1840, and was enlisted into the service as a speaker in several of the states of the Union, making nearly one hundred speeches advocating the election of General Harrison. In 1843 he was appointed probate judge of Porter county by the governor of Indiana. In 1847 he moved to the territory of Wisconsin and commenced the practice of law in Milwaukee.

In 1852 he became private secretary of Governor L. J. Farwell, and moved to Madison, his last residence. In 1854 he represented the Madison district in the assembly. In 1859 he was elected judge of the ninth circuit, and was subsequently re-elected without opposition. He resigned that office in 1865 and resumed the general practice of his profession. In 1869 he was again elected to the legislature, and was re-elected in 1871. In 1876 he was the candidate of his party for Congress, but was defeated in a republican district by a few votes. In the same year he was appointed one of the revisers of the statutes of the state. From 1869 to 1874 Judge Orton was dean of the law faculty of the university, and during his term of service as dean the degree of LL. D. was conferred upon him. In 1877 he was elected mayor of Madison, and served

one term. From 1870 to 1878, the time of his election as justice, he was the senior in the law firm of Orton, Keyes & Chynoweth.

Upon the reorganization of the supreme court, by the addition of two justices thereto, he and David Taylor were elected to those positions, and took their seats in April, 1878. On the retiracy of Chief Justice Lyon, Judge Orton succeeded him as chief justice. This was in January, 1894, and that position he occupied until his death. Among his last public acts was administering the official oaths to the state officers on their inauguration, January 7th, 1895. Shortly after that date he had sat for the last time upon the supreme bench, though he lived in daily hope of soon resuming his duties there. His death occurred at his home in Madison, July 4, 1895.

Politically, Mr. Orton affiliated with the whig party until 1854; since then he has been an independent democrat, but he never identified himself with politics while on the bench and never allowed his decisions to be affected by partisan lines.

The foregoing is, with but little variation, from the address of E. W. Keyes to the supreme court on the presentation of the memorial of the bar on the death of Judge Orton. After speaking of the latter's interest in history, literature and art and of his family, Mr. Keyes said:

"To sum up the career of this great lawyer and able judge, it can truthfully be said of him that he filled faithfully and well every position assigned him, as if he had inscribed upon his heart the words of the poet, 'Act well your part, there all the honor lies.'

"Judge Orton was a remarkable man; he possessed a high order of talent and ability. But in the first place I wish to speak briefly of those qualities which found expression, as a friend and neighbor, in the everyday walks of life. In his intercourse with the people of every class he was gentle, sympathetic, and kindly, and he was gallant and courteous in a strong degree. His radiant smiles and his ringing, cheery voice were in themselves mediums of encouragement and hope to all who came within the circle of his presence. He was natural and true, the same yesterday and to-day; and his genial manners, wherever he might be, were as a ray of sunlight to clear away the clouds. His demeanor



was peculiar to himself. He was fashioned in a mold of his own; there was no one like him. His geniality was proverbial. He was a born actor, and in his style there was evidence at times of the natural attributes of tragedy and comedy. In his step he was light and active; his movements were graceful and dignified; and he ever evoked, in his personal presence, the admiration of those with whom he came in contact. He was democratic in the highest and truest sense of the word; he was emphatically one of the people. His feelings and sympathies went out strongly and in no mistaken terms in behalf of the poor, the suffering, and the downtrodden, as against injustice and oppression in whatever form they might appear. And he was always ready to lend a helping hand to relieve the distressed, to strengthen the weak, and to give words of hope and encouragement to those who were despondent and in trouble. These noble and manly qualities, so characteristic of Judge Orton, were given manifestation, in a greater or less degree, every day of his life. His greetings to friends and neighbors were cordial, sincere, and came from the heart. The magnetism of his presence, the shake of his hand, would seem to impart his own impulses and to gladden the heart with pleasure almost unaccountable. The manner of his intercourse with his fellow-men, of high or low degree, was always the same, prompt, cordial, and genuine. There was no selfishness in it. He sought not to ply the arts of the intriguer or politician, to reap benefits therefrom. It was all spontaneous with him, the natural outpouring of his sincere and generous nature.

“While, at times, he seemed inexorable in his ideas of propriety, justice, and right, and perhaps was subject to the charge of severity, still he was always reasonable and ready to modify his views and opinions, of a personal or general nature, to correspond with those of his friends and associates, when such modification required no sacrifice of principle. He was a man of firm and lasting friendship, true as the needle to the pole, and while he was inapt to be presumptuous or to crowd himself forward in his association with others, yet he enjoyed in a high degree close and intimate companionship.

“It is true, however, that he lived much within himself, keeping

closely within the family circle, and was disinclined to society in its ordinary course. Still his sociability and fraternity were strongly developed and cultivated by him on all possible occasions.

"Judge Orton had a high sense of honor. He could not tolerate a mean or dishonest action in any one, and when knowledge of such conduct came to him he would denounce it in language forcible and strongly condemnatory.

"In his family, with wife, children, and grandchildren, he was ever kind, tender, and affectionate. It was here in this hallowed presence, in the latter years of his life, when not engaged in official duties, that his time was mostly spent. His devotion to her who, with him, had passed the half-century line of wedded life, was touching in the extreme. During the months of his ill-health, when confined mostly to his house, he seemed to live and move and have his being in the gentle ministrations of his fond and faithful wife. The mutuality of love and affection between them during the trying ordeal that ended in death was most beautiful to behold. Like lovers, hand in hand, they had passed along the road in the journey of life, until, weary with burdens, the tired footsteps of one sought the haven of rest which is ready for us all."

Justice R. D. Marshall presented to the court the resolutions of the bar of Chippewa county, and said, in part:

"The worthy life and distinguished public service of him whom we all here honor constitute an important part of the history of our commonwealth; this sufficiently appears and can be readily comprehended when it is considered that more than half the work of this court since its organization, as evidenced by the published reports, has been performed since Justice Orton's accession to the bench.

"I enjoyed his acquaintance for a considerable period of time, and came sufficiently within his circle to become sensible of his intellectual power, of his sturdy and noble manhood, his keen sense of justice, and his ready disposition to sweep aside all barriers that stood in the way of meting out exact justice between parties. Perhaps the time has not yet arrived to express justly an opinion of his judicial work, but when

it does, I venture the assertion that it will be clearly revealed and said of him that he was exceptionally free from the trammels of mere legal technicalities and existing opinions which fell below his high conceptions of those immutable principles of justice which measure out to and protect each in the possession and enjoyment of his just share of the pleasures of life, liberty and property; that he did as much, at least, as any of the distinguished men who have made the history of the jurisprudence of this state to abolish in fact, as well as in form, all distinctions between law and equity, to free our jurisprudence from the restraints of all technicalities and precedents that would otherwise stand in the way of the perfection of a system combining common-law methods with equitable principles, and to bring the law as a whole into complete harmony with justice and equity; that in this respect he made a mark upon the history of the jurisprudence of this state that will not fade away.

“He lived beyond the allotted time of human life, active in public work till near the last, and it may well be imagined that he was so far weary of the intense activities and exacting duties of his position that without regret, except at leaving those he loved, he submitted to the mysterious boatman to cross the dark river into that perfect rest of the eternal shades beyond, where we may reasonably hope an important element in the perfection of his joy is the consciousness that all men here revere his memory, award him a high place in the temple of human fame, and bear witness to his strong, deep but tender nature, his eloquence as an advocate, his high conceptions of official duty, his intellectual power, and the characteristics which rightly class him with the great men of our state and nation. Well may it be said that he left no stain upon his name, that death came to him not as an interruption but as a climax, his career constituting, as it were, a finished course, leaving little that can be regretted except that his valuable life could not have been prolonged and his labors continued; but a wise and mysterious Providence decreed otherwise, and removed him beyond the vale, leaving to us the memory of his honesty of purpose in



all the walks of life, his distinguished public career, the nobility of his manhood, and that will live on and on, in this respect:—

‘Immortality o’er sweeps  
All forms, all tears, all times, all fears, and peals,  
Like the eternal thunders of the deep,  
Into our ears the truth, he lives forever.’

“May we long feel his influence in his accustomed place, seek wisdom of him as if he were here by drinking at the fountain of his creation! Thus, though it is written he is dead, he will ever be with us to labor in the lines he loved and to sustain those principles of justice among men he maintained in life so long, so faithfully, and so well.”

Former Chief Justice Orsamus Cole stood before the bench on which he had sat for nearly thirty-seven years and said of his associate there:

“May it please the court.—I have been requested to make some remarks on this occasion on the late Chief Justice Orton,—a request with which I willingly comply, though with a sad and chastened spirit. Indeed, my natural feelings, without such a request, would have prompted me to say something, if permitted, to pay some tribute of respect and honor to the memory of a man with whom I had been associated for some twelve or fourteen years in the discharge of those important duties which the laws and constitution impose on the members of this court, and one for whom I entertained sincere personal regard to the day of his death. I speak for myself, as well as for a friend, a former member of this court, now in a distant state, who can only be present in spirit at this solemn session. [The reference is to Judge Lyon, at the time on a visit in California.]

“I shall attempt no eulogy on the deceased. That duty, I doubt not, will be performed, and well performed, by others. Nor shall I attempt to give even a sketch of the public life of the chief justice, varied and useful as it was. I will confine my remarks principally to his professional career upon the bench and at the bar in this state. I trust the few remarks I shall make will accord with simplicity and truth, as best becomes the subject and occasion.

“I think I became acquainted with Judge Orton in the winter of

1854. I well remember the first argument I ever heard him make in court. It made a deep impression on my mind. It was before this court in the case of *Veeder v. Guppy*, reported in the 3rd Wisconsin. The case was one which excited much interest and public feeling in the neighboring county of Columbia, and was hotly contested. Such giants in the profession as Judge Alexander Stow and E. G. Ryan were engaged in the cause as opposing counsel. When I mention that fact, it will be sufficient evidence to every lawyer that Judge Orton's intellectual ability and learning in his profession was then generally recognized; otherwise he would not have been called upon to meet such antagonists in an important cause.

"From that day to the time he left the practice to take a place on the bench of the circuit court, and subsequently on the bench of this court, he maintained his position in the front rank of the profession, and was justly regarded as one of the ablest lawyers and one of the most eloquent advocates at the bar in this state. He had a large practice in the trial courts and in this court. And in this connection I may add, as I am now the only survivor of all those who participated, either on the bench or at the bar, in the trial and decision of the novel and somewhat celebrated case of *Bashford v. Barstow*, reported in the 4th Wisconsin, which, it will be remembered, was a contest for the office of governor of the state and excited intense interest and strong public feelings, certainly in the political parties, Judge Orton appeared for the defendant. He was associated with such eminent and accomplished lawyers as Jonathan E. Arnold and Matt. H. Carpenter, but the burden of the argument upon all motions and questions of law arising in the preliminary proceeding rested mainly upon the shoulders of Judge Orton, who seemed, by consent, to be given the management of the cause in court. The questions involved were certainly new—I might say, almost of first impression under our form of government. They could not, of course, arise under any other form. Judge Orton met and discussed these questions with wonderful learning and ability. He was called upon, likewise, to discuss them often on the spur of the moment, without any time for reflection, examination of the author-

ities, or even to make preparation, and against such lawyers as Judge Timothy O. Howe and E. G. Ryan, whose supremacy at the bar will be questioned by no one. But Judge Orton was not surpassed by any lawyer in the case in the efforts he put forth or in the intellectual powers he exhibited. His client surely had no grounds to complain that his rights and interests in the litigation had not been well and fully protected and presented to the court. . . .

"As an advocate, Judge Orton was most effective, often eloquent and impassioned as a speaker. His mind was clear, logical, and he had at his command a ready flow of vigorous language to express his ideas. He was earnest and sincere in the treatment of all subjects. His sensibilities were lively and always excited by any act of fraud or injustice which he was called upon to review; and when he had to deal with such cases, which sometimes happens to every lawyer in practice, he did not soften his denunciations nor spare the wrongdoer, but hurled his words of wrath and sarcasm with pitiless contempt and scorn. Woe to the man who had excited his indignation by any base and dishonest conduct, for he was sure to receive a castigation in words which stung like the whip of a scorpion. And yet he could and did move human sympathies and excite deep emotion and tender feeling, while he captivated the judgment and carried away the understanding of his hearers by his appeals. But enough will have been said on this point when I add, he was a most effective speaker, and by the enthusiasm of his temper and magnetism of his manner he had great power and influence over courts and juries. . . .

"His elevation to this bench seemed to fill the measure of his ambition. The performance of the duties of the office was congenial to his tastes, and he looked and sought for no further honors.

"I hope I violate no rule of the most delicate propriety when I allude to his deportment on the bench and in the consultation room. As a judge, in his intercourse with his associates his conduct was ever kind, considerate and gentlemanly. He was ready to express his opinions on all questions, and willing to listen to objections to his views. He always did his full share of the work cheerfully. He was laborious and



attentive to the business of the court; ready to accommodate and yield to the wishes of others, when no principle was involved. He was an able, honest, and upright judge, trying always to do the right and to administer his high office with impartiality and firmness, never yielding to any popular prejudice or partisan feelings. He seemed to desire above all things to see justice done in all business matters, and he sought to settle legal controversies on the eternal principles of equity and right. What higher praise could be rendered to any judge? Some wise man has said that 'governments are established to promote justice among men.' Certainly no civilized society could long exist without some means or instrumentalities to secure justice as between man and man. How much real value he contributed to the jurisprudence of the state will appear by the reports of the cases that are published. His acts and labors as a judge are there recorded, and will remain for the instruction and criticism of an intelligent bar and public. I cannot but believe that his opinions will be read with respect so long as the state has a system of jurisprudence, and that no intelligent lawyer will ever fail to hold them in high estimation. It demands no little wisdom and ability to settle a code of laws for a new state—one which is adapted to its new conditions and, in a measure, to its unformed society. New laws are constantly enacted, tried, and changed, and must be made to meet certain wants and public necessities. And much of the labors of this bench are devoted to the construction of statutes, even to the effort of harmonizing them and making them consistent with each other. But in all this labor the chief justice participated, as well as in all proper attempts to improve the common law, and gave to them his sympathies and best powers. He was naturally conservative in his character, and fully understood the distinction of the functions of a judge and those of a law-maker. And, so far as he could, he endeavored to advance all wise reforms in the law and to establish a system of jurisprudence suited to the needs and business interests of our people. How well he succeeded in this work, time will disclose. There is certainly a vigor and elevated moral tone found in his opinions which all will admire. But this is not the time nor the occasion to

examine or review at length the judgments which he gave, and I forbear to do so.

“The last visit I was permitted to pay the chief justice was at his residence about a fortnight before he died. It was in the early part of the forenoon when I made my call, but he was dressed and received me at the door. At his invitation I entered his room and had a sad but friendly chat with him. I could see at a glance that disease was making great inroads on his constitution. But his voice was strong, and other indications of vitality led me to believe and hope that he would live some weeks, possibly some months. His mind seemed clear, but was occupied by subjects not pertaining to this life, but those relating to a future state of existence. He had upon his mind the old question which has perplexed mankind in all ages; a question asked by the patriarch Job in that wonderful discussion with his friends on the far distant plains in the east; a question possibly asked by thousands of the sons and daughters of Adam before Job’s day; and certainly a question asked by many thousands of them since his day, and one that will continue to be asked, I know not how long nor how often, but as long as man shall speculate as to his final destiny; and that was, ‘If a man die, shall he live again?’ This question seemed to engage his thoughts, or lie upon his mind. Of course, I could give no new answer to the question, nor throw any new ray of light upon it, nor was I able to solve any of his doubts or remove any of his difficulties. His observations seemed to call for some reply, and I made the commonplace remark, trite, but true, as I believe, that we are the children of a Creator of infinite love and mercy, one who gave us life and prepared this world for us with all its possibilities of happiness; and if, in His wisdom, it was for our permanent welfare that our spiritual nature, our moral and intellectual being, should survive death and the tomb, I was confident our Creator had so ordered from the beginning, and it might suffice to rest the matter there. After a few words further, we parted, I going my way of life, and he, in a very few days, ‘going to his long home, and the mourners go about the street.’”

During the day on which the supreme court took formal action on

the death of Judge Orton exercises in memory of Moses M. Strong were had. In the course of his address concerning the career and character of Mr. Strong, William F. Vilas thus spoke of Judge Orton:

"The late chief justice was the judge of this circuit when I came to the bar, and before him my fledgling efforts were put forth. Deeply and tenderly now, as 'many a time and oft,' I recall the gracious kindness with which he tolerated my crude beginnings, and, with justice not less than with considerate sympathy, guided the righteous cause to a righteous success. Himself long triumphant in the struggles of the bar, and well tried in practice among that older generation whose struggles were often merciless as fierce, it is a testimony to the nobility of his heart that he never rejoiced in triumph over an unequal antagonist, and especially to the young lawyer whose feeble attempts might well provoke a smile from his power, he was ever gentle, considerate and kind. Let blessing rest on his memory for it! He shall never want that prayer while I hold remembrance.

"Nor, though I purpose no account of his powers, can I withhold my recollection of the matchless eloquence which, in his happiest moods before the panel, I have never heard surpassed.

"All genuine orators are, I suppose, unequal, as occasions vary in demand and moods in responsiveness. But of him I can truly say that the intellectual and emotional delight with which I have listened, rapt, ravished and swept away by his thrilling energy, suiting 'the action to the word, the word to the action,' I treasure the memory of to this hour.

"Great occasions have sometimes proffered opportunities to orators worthy of them, and their masterpieces are prizes among men. The occasions tendered Orton were not historic, and, as with most of his profession, his fame must rest mainly in tradition. I wish I might add to its duration by this testimony."

Mr. Chief Justice Cassoday, on behalf of the court, responded as follows:

"The several members of this court fully endorse all the good things said of our brother, the late Chief Justice Orton. He was certainly a very remarkable man in many respects. With an ambition towering



far above that of ordinary mortals, with courage equal to any emergency, with an imagination excessively brilliant and grandly comprehensive, with a heart that sympathized with all suffering and despised all shams and all meanness, with quick perceptions and a clear insight into the ordinary motives of men, with an integrity of purpose which could not be swayed by friendships or enmities, with a remarkable command of language, with extensive reading and a large acquaintance with men and things, with an intensity of feeling and a vehemence of expression seldom equaled, he was born to be unusually conspicuous among men, and especially in the field of oratory and the arena of debate.

"Impelled by such qualities of head and heart, he left his home, his relatives, and his friends in the state of New York at the early age of nineteen, and went to Kentucky to begin the battle of life. While there, at Paris, in the vicinity of Lexington, engaged in teaching the young, he was himself being taught in courage, in oratory, and in statesmanship by the most illustrious advocate and political leader of that day—Henry Clay. Inspired by the manly presence and the personal popularity of that eminent American, he was induced to study law, and was admitted to the bar at La Porte, Indiana, at the age of twenty-one. Undoubtedly his belief in, and admiration for, Henry Clay prompted many of his political and public utterances throughout his long and eventful life.

"While engaged in the practice of his profession at Valparaiso, Indiana, in 1839, he met a Maryland girl, and the result was mutual love and marriage a few days afterward.

"The summer before he was twenty-three he visited the relatives of his young wife in Maryland. The great campaign between William Henry Harrison and Martin Van Buren was then in full vigor. The young and ardent 'Hoosier orator,' as he was called, soon found himself upon the stump; and he made eighty speeches during the campaign in the several states of Maryland, Pennsylvania, Virginia, Ohio, Kentucky, and Indiana.

"The merits of his addresses may well be imagined from the contents

of a letter now present, dated at Chambersburg, Pennsylvania, September 17, 1840, addressed to 'Mr. Orton,' and purporting to be written 'at the earnest and repeated solicitation of many' of the citizens of Chambersburg, 'friendly to the cause of Harrison and reform, some of whom' had heard him speak at Mercersburg, Pennsylvania, and at Hagerstown, Maryland, a few days before, inviting him to be present at a meeting to be addressed, among others, by Hon. James Buchanan, then forty-nine years of age and serving his second term in the United States senate, and the special champion of Andrew Jackson and Martin Van Buren in Pennsylvania, for the purpose of taking up and answering 'their arguments.' The letter states in effect that it emanated from strangers to Mr. Orton, and on behalf 'of a large and respectable portion of' his 'warm admirers as an energetic, eloquent public speaker,' and the writer says: 'Allow me, sir, to add that we know of none whom we prefer to yourself for that trust.' The tone of this letter suggests the early public efforts of Clay himself, and even those of the younger Pitt. The fact that he declined the invitation reflects credit on the judgment of one so young, without any disparagement of his courage.

"With such a make-up, Harlow S. Orton was necessarily a commanding figure at the bar, whether practicing in Indiana or Wisconsin. Upon the dissolution of the old whig party he joined the democratic party.

"Forty years ago the coming January, as indicated in remarks from the bar, there arose in this court a controversy as to the governorship, which attracted the attention of lawyers and statesmen throughout the whole country. In behalf of the claimant there appeared as counsel Timothy O. Howe, Edward G. Ryan, James H. Knowlton and Alexander W. Randall, while in behalf of the incumbent there appeared Jonathan E. Arnold, Matthew H. Carpenter, and Harlow S. Orton. It is unnecessary to say in this presence that it was a battle between giants in which, from the first to the last, Mr. Orton was a very potent factor. Upon his death there was found among his papers a note containing the refrain, which he has often uttered in the presence of his

brethren, to the effect that ex-Chief Justice Cole and himself were the only survivors of the many persons connected with that great trial.

"Six years upon the circuit bench made him restless of the confinement, and so he voluntarily resigned, in February, 1865, and resumed the practice of the law, which he continued until he became a member of this court more than thirteen years afterwards. During that time he assisted many attorneys in different parts of the state in the trial of causes.

"My estimate of him as a lawyer and advocate is manifest from the fact that twenty-five years ago Judge Bennett of Janesville and myself, being confronted in an important case by a large array of able counsel, including the late United States Senator Carpenter, then in the zenith of his great national reputation as a lawyer, were authorized by our client to select any one we desired to assist us on the trial, and without a moment's hesitation we selected Harlow S. Orton.

"In the trial of causes he seldom took any notes or made any memoranda, but relied upon his memory and the inspiration of the moment. His tact and skill were more conspicuous in his addresses to the court and jury than in the management of the trial and the examination and cross-examination of the witnesses. His sparkling wit, his biting sarcasm, his keen sense of the ludicrous, his positive conviction, his powers of invective, his personal magnetism, his commanding voice, and his ability to make every fact and circumstance appear favorable to his cause, all conspired to secure the attention of his hearers the moment he rose to his feet, in the court room or elsewhere.

"He was always very social with his friends; and during his long practice at the bar and for several years after he became a member of this court he was seen almost daily upon the streets, cordially greeting his many acquaintances and admirers.

"At the time he became a member of this court some of his friends doubted whether he could endure the protracted confinement and seclusion, the patient, severe, and continued study and investigation, so essential to the satisfactory performance of the responsible duties of his office. But he was equal to the emergency, and applied himself to



the work of his office with all the enthusiasm of his nature and all the energy of which he was master. He took great pride in the opinions he wrote, and was in the habit of reading them aloud to himself in order that he might the better detect any error in thought or misuse of language. Such readings were frequently interrupted by his brethren to prevent the premature announcement of the decision made, and on all such occasions he would rebuke himself with great emphasis for the inadvertence.

“His opinions are embraced in forty-seven volumes of Wisconsin Reports and speak for themselves. They will remain as his perpetual and living monument. Although he was over sixty years of age when he became a member of this court, yet he served for more than seventeen years—two years longer than Chief Justice Dixon, and longer than anyone except Chief Justice Cole and Chief Justice Lyon. During all those years, except when prostrate by disease, he performed his duties with patient industry, fidelity, and ability. In the consultation room he was, when in good health, vigorous, suggestive, and helpful. Frequently he would be the last to yield to the decision made, and then write the opinion, from which it might be inferred that he had no respect for any contention to the contrary. He had a high regard for the personal courtesies due among members of the court, and if in the earnestness of discussion and on the impulse of the moment he chanced to overstep the limits of propriety, he was thereafter quite sure to make a frank and full apology.

“Some may say he was equal, superior, or inferior to some other; but one independent personality, with fully developed brains and heart, cannot be intelligently compared with another in the language of mathematical formulas. On the contrary, the only intelligent comparison of such men, even in the same vocation, must be largely by way of contrast. As this court has never had, and never will have, but one Crawford, one Smith, one Whiton, one Cole, one Dixon, one Paine, one Downer, one Lyon, one Ryan, and one Taylor, so it never had, and never will have, but one Harlow S. Orton. Each of these men came here by a separate pathway, with different experience and

opportunities, and with a physical and mental make-up peculiarly his own, which resulted in an independent personality—unlike any other—and each has left his peculiar impress upon the jurisprudence of our state. . . .

“The soul of our departed friend was highly strung and took a broad range, and was capable of touching notes far above, as well as below, the ordinary gamut. He would at times, under the pressure of intense excitement, appear as an uncaged lion, and then again as gentle as a lamb. At times he would walk the room in the presence of one or more of his brethren, and discourse with much emphasis upon some incident of the day or of his past life, or some phase of social order, or the creative powers of God, or the possibilities and probabilities of immortality.

“He was by nature broad, generous, and honest, but excessively sensitive, and hence was more or less affected by his environment; and so at times a change in the weather was liable to produce exuberance or depression. For many years he dreaded death as the door leading to a terrible uncertainty, but he always had a strong belief in the fatherhood of God, the brotherhood of man, and the teachings of Jesus; and during the last weeks of his life he became resigned and reconciled. He was domestic in his habits and loved his family with the most tender affection. His companion for fifty-six years of married life was to him a guardian angel.

“When I last saw him he spoke of the terrible pains he had suffered and the hours of despair he had experienced. When able, he always wrote to each of his absent children every Sabbath, and did so only four days before his death. In each of these last letters he clearly analyzed his own condition and stated what his physician had said about his malady, but apparently without any expectation of recovery. In one of them he said: ‘It is a terrible life, to alternate between hope and despair.’

“On the afternoon of July 4, one of his sons and his wife, about to go out to ride, expressed to him the hope that the next time they went riding he would be able to go with them, but he shook his head. He read up to a few minutes of his last attack, and then marked the place

where he stopped. Soon after he told his wife he was liable to faint and what to do in case he did so. He then rose from his chair, said he was a 'pretty sick man,' lay down on the bed, and expired soon after. Thus, like John Adams and Thomas Jefferson, he died on the fourth of July, and when we remember his ardent love of country and the many patriotic utterances he has made, we may well doubt whether he would have had it otherwise. Thus sadly closes the last chapter in his recorded history in this court."

Four cases of unusual public interest have engaged the attention of the supreme court of this state, and Judge Orton has been, either as lawyer or judge, connected with them all. The first of these involved the question of the original jurisdiction of that court to inquire, by quo warranto, into the right of opposing claimants to the office of governor and to oust the person intruding therein or usurping the functions of the office. In that case Judge Orton appeared as counsel for Barstow who claimed to have been reëlected, but whose right to the office was denied. That case arose in 1855. In 1874 the "Granger cases" arose. These involved the right of the state to regulate railroad charges. Judge Orton argued the affirmative of the proposition as counsel for the state. The other cases referred to involved the right to read the Bible in the public schools and the power of the court to overthrow acts apportioning the state into senate and assembly districts because they did not conform to the requirements of the constitution as to uniformity of population and compactness of territory. In each of these cases he wrote an opinion.

The promotion of Judge Cole to the chief justiceship followed the death of Judge Ryan, and John B. Cassoday was appointed to the associate justiceship vacated by Judge Cole.

#### JOHN B. CASSODAY.

Mr. Cassoday was born in Herkimer county, New York, July 7, 1830. About three years later his father died and he and his mother moved with her parents to Tioga county, Pennsylvania. He began life as poor as the poorest of boys, but the same industry, good judg-



ment and well-directed ambition which made him one of the foremost lawyers of Wisconsin, carried him successfully through his early struggles. Besides occasionally attending the district school for a few months, working for his board, he attended one term at the village school at Tioga and one term at the Wellsborough academy before he was seventeen. For the next four years he was engaged in various kinds of manual labor, occasionally teaching in the winters. He afterward spent two terms at the academy of Knoxville, Pennsylvania, and two years at Alfred (New York) academy, from which he was graduated. He then went to the university of Michigan, where he spent one year, taking the select course, which was supplemented by a short term at the Albany law school, and reading in a law office at Wellsborough, Pennsylvania. Desiring to find a wider field, he went west in 1857, and settled in Janesville, Wisconsin, where he entered the law office of H. S. Conger, afterward judge of the twelfth judicial circuit, and pursued his law studies there until 1858, when he became a member of the firm of Bennett, Cassoday & Gibbs, which continued for seven years. He was ambitious and full of energy; and with a manly self-consciousness of his ability, integrity of purpose and determination to succeed in life, both as a man and as a lawyer, he took his place and was soon recognized as the peer of his brethren at the bar.

From 1866 to 1868 he was alone in his practice. At the latter date the firm of Cassoday & Merrill was formed; it continued for five years, when Mr. Merrill retired from practice. That firm was succeeded by the firm of Cassoday & Carpenter, which continued until our subject was appointed to the supreme bench, November 11, 1880.

As a lawyer, Mr. Cassoday was one of the brightest and most successful in the state. From the outset of his career he showed a clear, analytical mind, well-balanced, cool and cautious; but the success he obtained could only come from downright hard study and work. While in practice he was devoted to his profession, thorough and methodical in the preparation of his cases, and skilled and judicious in their management, always true to his client and equally true to himself and to the court; intensely anx-

ious to succeed, but always just and courteous to his opponents, he took nothing for granted, but went to the bottom of every question, and the members of the bar who were tempted to rake after him found but scant gleaning. In his arguments his earnest and clever manner of presenting each particular case and his complete mastery of the questions involved, gave him a rare power and caused him to be listened to by court, jury and bar with the utmost attention and sincerest respect. His practice was general, and during his twenty-three years at the bar he was constantly crowded with business. Among the cases in which he was thus engaged may be mentioned the Jackman Will Case, 26 Wisconsin, 104; Chapin Will Case, 32 Wisconsin, 557; Culver vs. Palmer, Smith vs. Ford, 48 Wisconsin, 115; Rowell vs. Harris Manufacturing Company, and Sergeant Manufacturing Company vs. Woodruff—the last two being patent cases in the federal courts.

Justice Cassoday's first vote for a presidential candidate was for Franklin Pierce in 1852, but he has been a republican ever since the organization of that party. In 1864 he was a delegate to the Baltimore convention which nominated Lincoln, and was placed upon the committee on credentials, which was that year a very important committee. He was the only member of the Wisconsin delegation who voted for Andrew Johnson, as a candidate for vice-president. In the same year he was elected to the Wisconsin assembly, and during the session served with credit on the judiciary and railroad committees. The thirteenth amendment to the constitution of the United States was ratified by this legislature at this session, and Mr. Cassoday took an active part in the debate upon its passage. In 1876 he was again called upon to represent his district in the same body, and was then chosen its speaker without opposition in his own party. He made up the committees with strict reference to their experience and capacity, and announced their appointment on the second day of the session. By so doing and by his tact and executive ability in the chair, the business was completed in fifty-eight days, being one of the shortest sessions in the history of the state. While he was speaker he confined himself strictly and exclusively to the duties of his office, and made himself master of

parliamentary law, so that he has since been habitually consulted on that subject.

In 1880 he was a delegate at large to the national republican convention at Chicago and was chairman of the Wisconsin delegation. He presented to the convention the name of the late Elihu B. Washburne as a candidate for President in a speech that was worthy the man and the occasion. On the morning of the second day of the balloting for a candidate for President, sixteen members of the Wisconsin delegation, including General Rusk, General Winkler, Joseph V. Quarles, William E. Carter, Norman L. James, A. J. Turner, the late Edward Sanderson, the late Frank L. Gilson and Mr. Cassoday, before leaving their hotel, resolved to cast their votes for James A. Garfield; and it was left to Judge Cassoday to determine the opportune time for casting such vote. Accordingly, and after six ballots had been taken, and Edmund's strength had gone to Sherman, and Washburne had lost twelve votes from Indiana, Mr. Cassoday announced to his fellow delegates that the time had come for breaking the deadlock; and thereupon and on the thirty-fourth ballot, he announced the vote of the delegation—sixteen of the votes being cast for General Garfield, who was nominated on the second ballot thereafter.

While at the bar Mr. Cassoday kept up a lively interest in all public questions and took an active part upon the stump in every important political campaign from 1856 to 1880, inclusive. He at all times exhibited an unflinching fidelity to the interests of the people and the fundamental principles of the republican party. He was frequently a delegate to state conventions, and presided over the one in 1879. He declined to be a candidate for numerous offices, including circuit judge in 1870, and attorney general in 1875. He was never a politician in any sense.

October 19, 1880, that eminent jurist, Chief Justice Ryan, died, thereby creating a vacancy upon the supreme bench. In a few days the republican press pretty generally came out in favor of the appointment of our subject for the vacancy. Up to that time he had never had any judicial experience, and was then engaged in stumping the



state for Garfield and the republican party, and continued to do so until the election, which occurred November 2.

October 23, 1880, the Rock county bar held a meeting and unanimously resolved to urge the governor to appoint Mr. Cassoday to the office made vacant by the death of Chief Justice Ryan, and sent the following communication to the governor:

Janesville, October 25, 1880.

Hon. William E. Smith,

Governor of Wisconsin:

Dear Sir: We desire to present for your most favorable consideration the name of the Hon. John B. Cassoday of this city, for a candidate for appointment as chief justice of the supreme court of this state. From an intimate acquaintance with him, by most of us for more than twenty years, we take pleasure in saying that he is a gentleman of irreproachable public and private character. As a lawyer, he is industrious, able and learned in his chosen profession, and, in our judgment, he will honor and adorn the place made vacant by the late learned and illustrious chief justice.

Yours with highest respect,

Ogden H. Fethers.  
F. N. Hendrix.  
Geo. G. Sutherland.  
John Winans.  
T. J. Emmons.  
J. J. R. Pease.  
Tom. S. Nolan.  
H. H. Blanchard.  
Frank Brooks.  
A. O. Wilson.  
A. Hyatt Smith.  
B. F. Dunwiddie.  
L. F. Patten.  
A. C. Bates.

John Nichols.  
J. W. Sale.  
William Street.  
John R. Bennett.  
Pliny Norcross.  
Ed. F. Carpenter.  
B. B. Eldredge.  
Wm. Smith.  
E. M. Hyzer.  
S. A. Hudson.  
M. S. Prichard.  
Wm. Ruger.  
M. M. Phelps.

The bar of numerous counties and cities throughout the state followed the action of the Rock county organization, and leading attor-

neys and business men from all sections of the state urged his appointment on the governor. To illustrate the opinion regarding the fitness of our subject for the high position to which his appointment was urged, we quote herewith two of the many letters received by Governor Smith in his behalf. The first is of the same date as the death of Chief Justice Ryan and is a worthy tribute from one of the most eminent men that Wisconsin has ever produced.

Washington, October 19, 1880.

His Excellency, William E. Smith,

Governor, etc.:

My Dear Sir: Upon you is cast the duty of appointing a successor to Hon. E. G. Ryan, chief justice. Hon. J. B. Cassoday, of Janesville, will be presented for your consideration and I desire to say that I know him well and believe that he would be an excellent appointee. He is a good lawyer, a gentleman, and perfectly honest in thought as well as act, and I should be greatly mistaken if his appointment did not prove to be a good one.

Very truly yours,

MATT H. CARPENTER.

The second letter is from one who had been intimately associated with our subject, both professionally and socially for many years, and who probably was as well qualified to speak of his abilities and true worth as any man in the state. The letter is as follows:

Milwaukee, Nov. 4, 1880.

Governor William E. Smith,

Madison, Wis.:

Dear Sir: I left home the middle of October and only returned last Saturday night, or I should have written you before, making some suggestions as to the vacancy on the bench of the supreme court. I have known Mr. Cassoday, of Janesville, over twenty years, and during the last five years of my residence there I was his law partner. He is an exceedingly industrious and studious lawyer; has had a very large and successful practice; has a judicial turn of mind; is a man of the most unbending integrity; and, in my judgment, is eminently fitted for the supreme bench. I have had no communication with Mr. Cas-

soday on this subject, but I have seen the action of the Rock county bar, and I most heartily endorse that action, and I hope your view of Mr. Cassoday's fitness will lead you to appoint him. Should you appoint Judge Cole to the chief justiceship and then appoint Mr. Cassoday to the position now held by Judge Cole, I am sure Mr. Cassoday's friends would recognize the fitness of such action and would cordially approve it.

I do not think it necessary to write at great length, for you are well acquainted with Mr. Cassoday, but I have had special opportunities to become familiar with his sterling qualities, and I trust you believe I would not recommend his appointment unless I thought such action would be for the interest of the people of the state.

Very respectfully yours,

WILLARD MERRILL.

November 11, 1880, Mr. Justice Cole, who had been a member of the court for more than twenty-five years, was appointed by the governor to the office of chief justice. He at once accepted the same, and thereupon Mr. Cassoday was appointed to fill the vacancy created by the resignation of Justice Cole.

Upon receiving notice of his appointment, Mr. Cassoday, in the following terms, formally accepted the trust tendered him:

Janesville, Wis., Nov. 13, 1880.

To His Excellency, William E. Smith,

Governor of Wisconsin:

My Dear Sir: I have received, through your private secretary, Hon. George W. Burchard, your letter of the 11th instant, inclosing a commission to me as associate justice of the supreme court of this state in place of Justice Cole, resigned.

Profoundly sensible of the high honor and the great confidence implied, and the sacred trust and weighty responsibility imposed; and trusting to the guidance of the great lights of the law, whose thoughts, reasons and judgments have been preserved in the books; and relying upon that Divine Providence, who so often lights up the darkened pathway, I hereby accept the office so generously tendered.

Your most obedient servant,

J. B. CASSODAY.



In April, 1881, both Chief Justice Cole and Justice Cassoday were elected to the respective offices, which they held by appointment, upon calls of the bar, the legislature and the people, without regard to party, and with the exception of a few scattering ballots, received the entire vote of the state—Chief Justice Cole having 177,522 and Justice Cassoday 177,553. In June, 1881, Beloit college conferred upon Justice Cassoday the degree of LL. D. In 1889 Justice Cassoday was reëlected without any opposition, upon calls from the bar of every county in the state, every member of the state legislature and every state officer, and received 210,899 votes, being all but 212 of the total number of votes cast.

Since 1885 Justice Cassoday has lectured to the senior classes in the college of law of the university of Wisconsin upon wills and constitutional law. His lectures on wills were published, in 1893, in a book entitled "Cassoday on Wills," and the same is now used as a text book by law students in the Wisconsin university under the instruction of John M. Olin, a prominent member of the Wisconsin bar, and also in other law schools. Judge Cassoday continues, however, to lecture once a week during the college year on the subject of constitutional law.

On the bench, Justice Cassoday has been indefatigable, and his opinions, appearing in forty-seven volumes of the Wisconsin reports, commencing with the fiftieth, have been cited throughout the land as authority by the bench and bar of many states. He has written several opinions in very intricate cases on the subject of wills, which have attracted more than usual attention from the profession, and we therefore mention some of the most important. Will of Mary P. Ladd, 60 Wis., 187; Scott vs. West, 63 Wis., 529; Newman vs. Waterman, 63 Wis., 612; Will of Ward, 70 Wis., 251; Ford vs. Ford, 70 Wis., 19, and the same case, 72 Wis., 621; Will of Slinger, 72 Wis., 22; Will of Ehle, 73 Wis., 445; Baker vs. Estate of McLeod, 79 Wis., 534; Burnham vs. Burnham, 79 Wis., 557; and Saxton vs. Webber, 83 Wis., 617. He has likewise written several opinions in cases involving important questions of constitutional law, among which may be mentioned Wisconsin Central Railway vs. Taylor County, 52 Wis., 37; Baker vs. State, 54

Wis., 368; Cathcart vs. Comstock, 56 Wis., 390; Chicago & Northwestern Railway Company vs. Langlade County, 56 Wis., 614; Baldwin vs. Ely, 66 Wis., 171; State ex rel. vs. Forest County, 74 Wis., 610; State ex rel. vs. Ryan, 70 Wis., 676; J. S. Keator Lumber Company vs. St. Croix Boom Company, 72 Wis., 62; State ex rel. vs. District Board, 76 Wis., 203; State ex rel. vs. Mann, 76 Wis., 469; State ex rel. vs. Cunningham, 82 Wis., 39, and 83 Wis., 90; State ex rel. vs. Stewart, 60 Wis., 587. This last case was upon the much mooted question of inter-state extradition, and was in conflict with some previous decisions in state courts, and was subsequently disapproved by one text writer and two or three state courts; but more recently it has been expressly approved by other text writers and by the highest courts in Colorado, Georgia, New York, Massachusetts, North Carolina and by the supreme court of the United States in the case of *Lascelles vs. Georgia*, 148 U. S., 547. Other cases might be cited which have been of more or less public interest, but they are too numerous to mention here. Since July 4, 1895, Mr. Cassoday has been chief justice of the supreme court.

In addition to his official duties and work in the law school, Justice Cassoday has prepared and read before literary gatherings or societies various papers upon Law and Lawyers, Lord Mansfield, The American Lawyer, American Citizenship, our Magna Charta (which is the first chapter of this work), and John Scott, and John Marshall, being his subjects. During the eighteen years he has been upon the bench he has entirely refrained from participating in any affairs or gatherings of a political or public nature, except that he delivered an address on one fourth of July and a memorial address upon the death of General Grant, August 8, 1885—both to his old neighbors and friends in Janesville and Rock county. The latter address is herewith reproduced:

“When great deeds are to be mentioned, apt words are most difficult to find. When great sorrow is experienced, the heart is most thoroughly subdued.

“To-day the younger portion of American citizens are enquiring of themselves, What is the cause of this extended sorrow? What has induced this great personal devotion? What has prompted these lavish

expressions of sympathy and honor? Why this immense cortège extending throughout the republic and in other lands? Why should this man be singled out from the many millions and thus crowned with universal homage? These are the questions on the lips of the young.

"To those more advanced in life, the occasion revives the memory of a thousand issues, each at the time portentous for good or evil; and now, as the spirit of the great hero has crossed the silent river and dust is returned to dust, it is fitting that we take a retrospective glance at the events which gave him the opportunities for proving his heroism and greatness—for these qualities existed though concealed in the man, before being called into action. What person whose hair has been frosted by the lapse of time does not remember the sad mutterings of war along the whole southern sky during the five months immediately preceding the outbreak? During those months defiance was constantly uttered, states seceded, and a new government organized within our borders, amidst complications which seemed to forbid a national protest.

"During those months the false were clamorous for surrender; the timid, ready to compromise or divide the republic for the sake of peace; and even the brave and patriotic were filled with terrible forebodings on account of pending possibilities. Amid scenes of that character, there would occasionally be a voice, louder, firmer and more inspiring than the rest, to the effect: 'Stand for the right! Stand for your country! Trust in God! Do your duty and all will be well!'

"Finally the red cloud of war flew athwart the sky, and the nation was confronted with the terrible alternative that either one-half of the republic must surrender to the so-called Confederacy, or that blood and treasure must flow in large quantities for the preservation of the Union. The weak-hearted fainted. The cowardly emigrated. The brave quietly, but with firmness and determination, took sides for or against their enemy. Many of the more heroic at once voluntarily left the plow in the furrow, the tools in the work-shop, the goods on the counter, the pen in the office, and hurried away to the post of duty. Among the hundreds of thousands who thus went to the front at the first call of patriotism, was a simple, quiet, modest clerk in a leather store of a neighboring city—notwithstanding he had a family on his hands with little means of support, but with priceless treasures of mind and heart not then revealed to his nearest neighbors. For ten months



but little was heard of him. Men who had proved their capacity for leadership in any former war were either too old for active duty or in sympathy with the rebels. All were therefore looking for a coming leader, but none suspected the Galena clerk.

"Washington and the Potomac, Richmond and the James were the great theaters of action. Time rolled on. Expected victories failed to be realized. Disappointments and defeats became more frequent and disastrous. Many brave men lost all hope, save in the God of battles through the efficacy of prayer. By and by the Galena clerk was given a command and allowed to venture out in the dead of winter. He boldly struck the rebels in their fortifications, and in quick succession Forts Henry and Donelson surrendered with many thousands of prisoners. The news came like claps of thunder from a clear sky. The people of the west began to feel they had at last found the coming leader. But his capacity for commanding a large army or several armies in combination was not yet demonstrated, and by many denied. Then followed the great battle of Shiloh, against one of the ablest and most skillful leaders of the enemy, and, although victorious, yet the price paid left the question of his capacity for great deeds still debatable. But the campaigns which followed in the face of cruel criticisms, especially that of Vicksburg and Chattanooga, settled the question in the west, and with many in the east. Finally, called by Congress and the President to take command of all the Union armies, he moved forward with a simplicity of manner, a singleness of purpose and a firmness of tread, indicative of a clear perception of what ought to be done and a conscious ability to do it. This purpose was pursued with an unyielding pertinacity to the very end. With an abiding confidence in the rank and file of his army, and an unselfish generosity toward all his subordinates, he moved forward like one born to conquer, and by continually pressing the enemy along all the lines and in every quarter he was within a year enabled to force a complete surrender on his own terms.

"Having restored peace to his shattered country, he returned to Washington and his home, not as an ambitious conqueror, anxious for applause of men and exaltation at the hands of his countrymen, but as a simple, quiet citizen, fully satisfied with having performed the duties which, under an overruling Providence, he had been called upon to do. The same singleness of purpose and unyielding pertinacity which

crowned his military efforts with glory and honor marked his career as a civil magistrate.

“But twenty years have elapsed since peace was restored, and the men comprising the two armies returned to their respective homes and to the ordinary avocations of life. Twenty years have elapsed since the kind-hearted and magnanimous Lincoln fell a victim to cruel hate. Emblematic of a better future, to-day ex-Confederate and Union soldiers join in the mournful procession and bow over the grave of him who did so much to restore the nation as a permanent blessing to all the people thereof; to the new south as well as the north, and to the posterity of both. So it is not always true that the people are fickle, nor that republics are ungrateful. But what were the qualities of head and heart which, under such peculiar circumstances, could thus challenge the admiration of all his countrymen and the great and good throughout the civilized world? Without sufficient property to supply the ordinary wants of his family, without any influential friends except as attracted by his genius, without any special gifts of speech or of language, without any of the qualities which the world calls brilliant, he rose, nevertheless, in four years from absolute obscurity to the very highest pinnacle of military fame. This was not the result of mere luck or accident. The numerous victories achieved were never secured by mere tenacity of purpose. The contest was one of brains as well as valor. With a contempt for all pretense or military blandishments; with an abhorrence for mere newspaper notoriety, evidenced by his exclusion from the lines of all newspaper correspondents; with a singleness of purpose to capture or destroy the enemy in front of him, which was never frustrated, even for his own personal reputation or advancement; with prescience capable of seeing things in advance in their true relations; with an accuracy of reason and a largeness of comprehension seldom present in the midst of great excitement; with a cool deliberation incapable of being disturbed by the severest shock of battle; with the capacity for adapting adequate means to appropriate ends, with a decision of character and a fearlessness in taking upon himself grave responsibilities seldom equaled; with a reticence which never in advance revealed his plan of battle; with a confidence in the wisdom of his conclusions which at times was perfectly sublime; with an unyielding persistency in carrying all his plans into complete execution, he was, from the very nature of things, almost irresistible in every battle in which he was engaged.

With an individuality distinctly marked; with a make-up and methods peculiarly his own; with a character unique and incomparable, he seems to have been created and especially trained by Almighty God for the great deeds which he did and for the doing of which his name will go forward with Lincoln's and Washington's to the remotest generation.

"But we are not to blindly worship General Grant nor any human being. He had faults which were radical. In some directions he transcended in greatness any of his countrymen, living or dead. In other directions he was surpassed by many. On his return from his trip around the world, had he gone into absolute retirement from all business and politics, his life work would undoubtedly have been far more satisfactory to himself, and, if possible, more highly appreciated by his countrymen. The great mistake of his life consisted in blindly trusting occasionally in some unworthy of becoming his associates, and who, when fully revealed, were found to be scoundrels in the disguise of friends, feeding upon his credulity and fattening upon his great reputation. But notwithstanding this weakness the verdict is unanimous. He was absolutely without duplicity or guile, thoroughly sincere, strictly honest, uncommonly generous and grandly magnanimous.

"From all this we may learn that above every citizen, above the wisest magistrate, above the greatest hero, above the grandest potentate on earth, there is one ever-living and true God presiding over the destinies of nations and peoples; creating by His fiat; shaping with His hands; guiding with His finger; chastening through sorrow and affliction; nurturing by His care; winning by His love; saving by His grace. Humbly submitting to His eternal laws, reverently seeking guidance from His everlasting wisdom, let us, as a common brotherhood, seek, by doing His will, to finally become citizens of His kingdom, the future republic of the soul."

In February, 1898, Judge Cassoday was elected president of the state bar association. A meeting of that body was held on the 8th of June, 1898, in connection with the semi-centennial celebration of the organization of the state government at Madison. After calling that meeting to order he delivered the following address:

I can hardly realize that fifty years have transpired since Wisconsin was admitted into the Union and that I have been a citizen of this state



during all of that time, except the first nine years. Nor can I fully realize that Wisconsin is only sixty years younger than our national government. This was the last of the five great states carved out of the northwest territory, and only sixty years prior to the admission of Wisconsin into the Union, the first attempt at any civil government in all that territory lying east of the Mississippi river, north of the Ohio and west of Pennsylvania, was instituted at the place where the city of Marietta, Ohio, is now located. The centennial of the civil government in the northwest was celebrated at that place ten years ago, and it was my high privilege to be present and participate in the proceedings. At that time Spain owned Mexico and all the territory west of the Mississippi, except what is now Oregon, besides many islands of the sea. To-day she is not quite certain that she can hold together the old homestead—less than four times the size of Wisconsin and with a population only a trifle more than is now embraced in these five great states which have since that time sprung into being. So it is only 110 years between Putnam and Marietta and Dewey and Manila. Thus God deals with nations and men in the making of history.

Twenty-nine states were in the Union prior to Wisconsin, and yet all of our citizens are proud of its history—proud of its inheritance—proud of the variety of blood—of nationality—of experience—of religion, which pervades our grand commonwealth. The result is, that our citizens have achieved a broader education—a broader intelligence, and thus they have become a grand—patriotic—conservative—cosmopolitan people. The legal profession has done its full share in making this history. I regret that the state bar association had not, in February last, arranged to present to this meeting an account of some of the agencies of lawyers in making, administering and enforcing the constitution and laws of our state, and the federal government, and, also, to give us a sketch of at least some of the many lawyers who have gone out from our borders and become distinguished in other states, and a few even in the nation. Impartial history will, necessarily, mention some of them, but the memory of many able and worthy lawyers rests in tradition only, and hence we owe it, as a duty to those who may come after us, to preserve the memories of those who have passed away, as rich legacies to coming generations. Strike out from our history the influence of lawyers in making our constitution and laws, and our state would, to-day, make a far different and less praiseworthy showing. In

the convention which framed the first constitution, preparatory to admission into the Union, there were 27 lawyers out of 124 members. Among them were two, whose faces adorn the walls of this court room—Judge Dunn and Chief Justice Ryan. That constitution was rejected, but the labors of the convention which framed it were highly beneficial in aiding the next convention to frame an acceptable constitution, and one of the best that can be found in any of the states. In that second convention, 16 out of 69 members were lawyers, and the paintings of two of that number grace the wall of this court room, in the person of Chief Justice Whiton, who always looked the judge, acted the judge and was the judge, and the other was Chief Justice Cole, then only twenty-eight years of age and who, after one term in Congress, occupied a place upon this bench for thirty-six and one-half years—longer than any person ever occupied the supreme bench of the United States where the appointments have been for life. Judge Cole listened to every argument I ever made in the supreme court of this state, and it was my high privilege to be a co-worker with him upon the bench for eleven years, and, thank God, he is able to be with us on this semi-centennial occasion. I am, moreover, pleased that my old friend and one of my first partners, and one from whom I early learned some valuable lessons in trying lawsuits, Hon. John R. Bennett, is present and will address us to-day.\* I am, also, gratified that we have with us to-day, one whom I first saw 39 years ago, presiding in another wing of the capitol, and before whom, as judge, I practiced at the bar for fifteen years, and with whom I was a co-worker upon this bench for thirteen years, Chief Justice Lyon. As a mark of honor to him and as an act of propriety for the occasion, I have requested him to preside over this meeting, and so I present to you Chief Justice Lyon—who needs no introduction.

February 21, 1860, Justice Cassoday was married to Mary P. Spaulding, of Janesville, Wisconsin. Four daughters and one son have blessed this marriage. Their names are: Ella S., now Mrs. William H. Jacobs, of Denver, Colorado; Belle E., wife of George H. Wheelock, of South Bend, Indiana; Anna L., now Mrs. Nathan Clark, of Duluth, Minnesota; Eldon J., who is connected with the legal department of the Atchison, Topeka & Santa Fe Railroad in Chicago, and who married

\*Judge Bennett's address appears elsewhere in this work.

Miss Sophia Clawson; and Bertha May, now Mrs. Carl Johnson, of Madison, Wisconsin. Previous to their marriage, Mr. and Mrs. Cassoday became members of the Congregational church, and four of their children are now members of it. While making no ostentatious parade of his religious views, our subject endeavors to lead a worthy Christian life.

Justice Cassoday owes the high position to which he has attained entirely to his own exertions. He has, through his ability, steadfastness of purpose and integrity, advanced to membership of the highest tribunal of his state, and possesses the highest measure of respect of the bar and people. His career affords a forcible illustration of the power of patience, perseverance and conscientious work in enabling a man to surmount and overcome early difficulties and obstructions of no ordinary kind.

It is but just and merited praise to say that as a lawyer Mr. Cassoday ranked among the ablest of the great west; as a legislator, he was the peer of any of his colleagues; as a judge, he is ever honest, painstaking, laborious, courteous, learned, and strong; as a citizen, he is honorable, prompt and true to every engagement; as a husband and father, a model worthy of all imitation. His characteristics are a modesty of demeanor, an entire absence of all parade and ostentation and a simple dignity, born of innate purity and self-respect. He has an educated conscience, a large heart, and a practical sympathy, a tender regard for young men who are struggling for an education and a higher life. He is an attractive man personally; he has a somewhat deep set, sharp and steady eye, firm lip, strong chin and high, well-proportioned forehead; all are outward signs of the rare man. He has exercised a strong influence upon the jurisprudence of Wisconsin, and proven a worthy successor of Whiton, Dixon, Ryan and Cole, the elected chief justices of the court over which Judge Cassoday presides by virtue of his seniority of service. The reports of the supreme court will bear witness to future generations of his ability, industry and judicial power. As a man, he is not less to be admired than as a judge. His is a rounded and complete character.



As thus constituted the court continued until April, 1891, when death removed a giant from the bench in the person of David Taylor, May 4, 1891. John B. Winslow was appointed by Governor Peck and qualified as associate justice in place of Judge Taylor in May, 1891, and continues in the discharge of his duties at the time of this writing.

### JOHN B. WINSLOW.

John Bradley Winslow was born in Nunda, Livingston county, New York, October 4, 1851, and is the only son of the late Horatio G. Winslow; his mother was Emily (Bradley) Winslow. He is a descendant of Kenelm Winslow, second brother of Governor John Winslow of Plymouth Colony and one of the prominent immigrants who came to America about 1632. Mr. Winslow's parents located in Racine, Wisconsin, in 1855, and there he resided until he removed to Madison. His general education was received in the public schools of that city and the Racine college; he was graduated from the latter with the degree of A. B. in 1871. In 1872 he began to prepare for admission to the bar under the direction of E. O. Hand, in whose office he remained until 1873, when he became a clerk and student in the office of Fuller & Dyer. In September, 1874, he entered the college of law of the Wisconsin university and was graduated therefrom in June, 1875. Returning to Racine, he entered the office of Fuller & Harkness, and, on the withdrawal of Judge Harkness from the firm on account of ill health, Mr. Winslow became a member of the firm, which continued to do business until 1877. In 1879, 1880, 1881 and 1882 Mr. Winslow was city attorney for Racine. From January, 1880, until 1882 he was in partnership with the late Charles A. Brownson, after which date he became associated in that capacity with Joseph V. Quarles, now of Milwaukee, a relation which continued until he became judge of the first circuit, comprising the counties of Racine, Kenosha and Walworth, a position to which he was called by the electors in April, 1883, by a large majority, and the discharge of whose duties he entered upon in January, 1884. His reelection, without opposition, in 1889 is a higher testimonial to his fitness for the judicial office than can be conveyed by language. He

continued in the discharge of his duties as circuit judge until May, 1891, when he became a justice of the supreme court. In April, 1892, he was chosen by the electors, without contest, for the unexpired portion of his predecessor's term, which ended with January, 1896. In April, 1895, he was elected for a term of ten years. Though he was opposed at that time, he secured a fair majority of the votes, and, notwithstanding his political views were democratic and the state, at the last previous general election, had given an unusually large republican majority, he was supported by many leading lawyers of the dominant party and some of the most prominent journals of the same party.

Judge Winslow is strongly attached to the Episcopal church, and has served Grace church at Madison as warden. On January 19, 1881, he was wedded to Miss Agnes Clancy; they have five children—two sons and three daughters.

A gentleman of large experience at the bar of the first and other circuits has furnished the editor the following estimate of Judge Winslow's judicial career, particularly as circuit judge; the reports of the supreme court establish his record as a member of that tribunal:

The first judicial circuit has always been overwhelmingly republican. John B. Winslow always supposed and gave out that he was a democrat; yet he was elected and reëlected circuit judge by large majorities, in spite of active opposition at the hands of some partisans. Nothing could better illustrate the estimate placed upon his judicial abilities by the bar and people of the counties of Racine, Kenosha and Walworth.

Mr. Winslow studied law in Racine and was there admitted to the bar. As he entered upon practice it was noticed that he frequently had an adversary who rarely opposed the other lawyers of that or any circuit, viz.: his own sense of right; that in a controversy he was disturbed if his judgment told him that his antagonist's legal position was the better. It is said of John T. Fish, then of the Racine bar, that, in preparing for trial, he stated his adversary's case fully and fairly, and brought out in the most favorable light all his opponent's points of law and fact, in order solely that he might the better devise means of overcoming them. The same method of preparation was followed by Winslow, but with

immediate recognition of the legal value of correct contentions and a strong mental disinclination to combat them. This peculiar cast of mind, so rarely possessed by a lawyer, and the resulting ability, or rather intellectual necessity of examining both sides, without regard to predilection, impressed his associates. The consequence was his elevation to the bench.

During his first candidacy for election as circuit judge the only argument urged against him was his youthfulness, based on the maxim: "Old men for counsel." But the people saw that this defect was certain to mend by lapse of time, while the only corresponding change in the old man might be a white beard.

Judge Winslow's career on the trial bench fully justified the expectations of his associates at the bar. In his decisions there, as later upon the supreme bench, he followed principles rather than authorities. A rule of law became such on account of its intrinsic reason and justice, rather than because it had been announced by a court in New York or Kansas.

He always had a clear and correct view of what are stigmatized by the defeated lawyer as technicalities. Recognizing the fact that rules of pleading and practice are necessary to the orderly administration of justice, he gave to them full authority, and so has avoided the not unfrequent predicament of the judge who gives crude justice, based on the impression that the plaintiff is worthy and his case meritorious, and goes "across lots" to a decision; and so he has avoided sticking in the bark of the letter, which is often the result of undue strictness in application of rules more or less arbitrary.

On the bench Judge Winslow has never been open to Bacon's strictures on the "overspeaking judge." Practitioners before him at the circuit remember with gratitude that his interruptions of counsel were only for the purpose and with the result of developing the case and defining the issues.

As circuit judge, his impartiality was notable. He accomplished the difficult feat of stepping from active practice to the bench, and leaving behind him all bias arising from friendship or antipathy. None of his



former associates could detect any discrimination on grounds of former relations.

He always appreciated and carried well the dignity of his office. Only once was this dignity at all shaken. This was years ago, at Kenosha, in a case of breach of promise of marriage, when an Irish witness—all unconscious of any ludicrous element—was detailing the agreement between himself and the defendant, likewise Irish, for a load of hay as marriage brocage fee, and the repudiation of the contract by defendant on account of the age of the wife tendered. Witness testified: "He (defendant) said he wouldn't give a load of hay for such an old heifer as that."

The manifest grievance of the witness at defendant's breach of faith, the intensity with which defendant regarded the witness, the total absence in the mind of each of any idea that the matter could be regarded otherwise than seriously, was too much for bench and bar, and a recess was taken precipitately.

Upon the supreme bench Judge Winslow has earned the commendation of the bar and the people. The same qualities which led to his selection as circuit judge have been constantly manifested. His opinions have been terse and condensed and his decisions have proceeded upon reason. At all times he has had the courage to stand by his convictions, regardless of personal results to be apprehended. He seems incapable of servility to precedent.

As a consequence his opinions, as found in the reports, will require but little revamping and "distinguishing" because of obiter dicta, or on account of divergence from principle by following decided cases.

The term for which Judge Cole was elected chief justice expired in January, 1892. In the preceding April Silas U. Pinney had been elected a justice of the court; he entered upon his duties simultaneously with Judge Cole's retirement. In the meantime the people had adopted a constitutional amendment declaring that the chief justice and associate justices of the supreme court shall be severally known as justices of said court; that the justice having been longest a continuous member of the court (or in case two or more of such senior justices having served for

the same length of time, then the one whose commission first expires) shall be *ex officio* the chief justice. The result of this provision was to make Judge Lyon the chief justice.

#### SILAS U. PINNEY.

Distinction as a lawyer and judge has come to Mr. Pinney because his merits and industry have deserved it. For many years before his elevation to the bench he had a high standing at the bar, and was known throughout Wisconsin and the northwest as a lawyer of great ability, large attainments and unimpeachable integrity. Probably, indeed almost certainly, no member of the Wisconsin bar has argued a larger number of important cases in the supreme court of the state than he. His name appears in every volume of the reports of that court published since his admission to the bar, either as attorney or judge, with but one exception. Thus, from 1854 to the time of this writing, he has been engaged in forming the jurisprudence of Wisconsin. A close examination of the Wisconsin reports will show that either as reporter, attorney or judge, Mr. Pinney has been an important factor in the judicial history of Wisconsin.

Silas U. Pinney was born in Rockdale, Crawford county, Pennsylvania, March 3, 1833. His paternal ancestors, both lineal and collateral, were American for many generations. In 1642 members of the family emigrated from Somersetshire, England, to America and settled in Ellington, Connecticut. From there they moved to Massachusetts. His father, Justin C. Pinney, was born in Becket, Berkshire county, Massachusetts; was reared to manhood in Crawford county, Pennsylvania, where Aaron Pinney, grandfather of Silas, located in 1815. Justin married Polly M. Miller, of German descent and daughter of a prominent clergyman who had settled in Crawford county in 1792. The family of Justin Pinney came to Wisconsin in 1846 and located on a tract of land in what is now Windsor township, Dane county; here he pursued farming until his death in 1863. Silas was "brought up" on the farm, and, in common with the great majority of the farmers' sons of the early days, had but limited opportunities for receiving instruction. Such as



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were within his reach he improved to the fullest extent. His love of books was born with him and every opportunity to enjoy them was hailed with delight. A marked characteristic of him as boy and man is a wonderfully retentive memory. When about sixteen years he began to teach school and also concluded to prepare himself for the law; school teaching continued for three winters. During these years all spare time was given to reading standard treatises on legal subjects. In April, 1853, the future lawyer and judge became a student in the law office of Vilas & Remington, at Madison; in February, 1854, he became a member of the bars of the circuit and supreme courts; in May following he became a member of the firm of Vilas, Roys & Pinney, the senior partners being L. B. Vilas and Samuel H. Roys. In 1856 Mr. Vilas retired from the firm; the business was continued under the name of Roys & Pinney until the former's death in August, 1857. In February, 1858, Mr. Pinney and the late J. C. Gregory formed a partnership, which was enlarged in the following October by the admission of Chauncey Abbott, the firm name being Abbott, Gregory & Pinney. In 1860 James M. Flower became a member of the firm and so remained about two years. In 1863 Mr. Abbott retired. Messrs. Gregory and Pinney remained partners until 1879. In 1880 A. L. Sanborn became a partner of Mr. Pinney's and so remained until 1892, when the senior member was elected one of the justices of the supreme court.

It is remarkable and highly creditable to Mr. Pinney that in his earlier years at the bar he attained so great success. The Madison bar then was a strong one, as it has always been. Notwithstanding this fact and the further facts that Mr. Pinney's preparation for the legal profession was somewhat meager, and that he lacked anything in the way of a "pull" to help him get business, he soon acquired an extensive practice and took rank in the front row of lawyers. Edwin E. Bryant in his article in the *Green Bag* says that Mr. Pinney devoted much time to acquiring knowledge of the correct methods of procedure, and was early noted for his correctness as a pleader and his mastery of every detail of practice in law or equity in the state and federal courts. The adoption of the code of procedure, borrowed from

New York in 1856, was a radical change in practice, and drove from it some of the older lawyers who were too set in the old ways to learn a new practice. Mr. Pinney was one of the first to master the new method, and he became an authority on all questions of procedure under the code. . . . He was highly esteemed at the bar and was retained in much important litigation. It is probably within the bounds of truth to say that no single lawyer in the state has been retained in more cases in number and importance than he. As a lawyer he was remarkably successful, and conducted cases involving great amounts of property with a professional skill and practical sagacity that kept him loaded with retainers and cases. He was several years professor in the college of law of the state university, but the demands of his practice compelled him to sever this connection. He conducted to successful result much of the important litigation growing out of the "land grants" made by Congress to aid in the construction of railroads. Out of these and the fickle legislation of the states in disposing of them arose a vast number of perplexing questions to be settled by state and federal courts; and Mr. Pinney's labors in this field were extensive and his services were sought by many parties in interest.

The same writer says that Mr. Pinney never made the mistake so common to western lawyers. He kept out of politics. His political status was with the democratic party, but he was always independent in politics. He served as city attorney in his youth, and, as a good citizen ought, helped good local government by serving as member of the city council and twice as mayor, once without opposition, and to the great betterment of tax-payers; and in 1869 he was candidate for attorney general, without prospect of election. He also represented the Madison district for one term in the lower house of the legislature; but he has never sought office nor allowed interest in politics to interfere in the least with devotion to his profession.

In 1891, as the term of Chief Justice Cole drew near its close, and his advanced age rendered it just that he be relieved from further judicial labor, the legal profession throughout the state, irrespective of party, very generally signed a call on Mr. Pinney to stand as a can-



didate for justice of the supreme court. He did so, and in April was elected. He entered upon judicial duty ripe in experience and with a mind most thoroughly trained and equipped for successful labor on the bench. His work thus far has met the most sanguine expectation of friends. Careful and painstaking, he brings to this duty every quality of the judge. With a mind quick and subtle in its discrimination, with a memory of inexhaustible storage capacity, so to speak, with marvelous familiarity with the law books, he is a helpful man on any bench.

Outside of the professional range he has been a wide and careful reader. He is familiar with history, has traveled much in Europe, keenly enjoying everything of historic or biographical interest, and finding the best of it in every place. He has a taste and appreciation for art and architecture rarely found in the inland-bred lawyer of America, and is familiar with most that is written of the various schools and stages of sculpture, painting and architecture. A most agreeable companion, full of incident and anecdote, well informed as to men and affairs, abounding with memories of the prominent men of his time, he derives from social intercourse and travel great pleasure and instruction and imparts to others vastly more. As a writer he is clear and concise and master of an excellent judicial style. Never an impassioned orator, his arguments were direct and clear, in good logical order, and they made plain to court or jury the most intricate matters. In his younger days he reported the sixteenth volume of Wisconsin reports, and in 1872 he gathered up the unreported and imperfectly reported work of the territorial court and old supreme court, which was published in three volumes as "Pinney's Wisconsin Reports." This work was done under special appointment by the supreme court.

Mr. Pinney was married March 3, 1856, to Mary M. Mulliken, a native of Farmersville, Cattaraugus county, New York. One son, Clarence, was born to them; he died at the age of twenty. An adopted daughter, Bessie, died at twenty-one.

On the expiration of Judge Lyon's term (January, 1894) Alfred W. Newman succeeded him and continued a member of the court until his death.

## ALFRED WILLIAM NEWMAN.

The following sketch of the life, character and public services of Judge Newman is from the memorial of the state bar association adopted at a meeting held February 22, 1898, and prepared by a committee, appointed for that purpose, consisting of J. W. Losey, of La Crosse; J. M. Morrow, of Sparta, and Burr W. Jones, of Madison. The memorial was presented to the supreme court March 21, 1898:

"Alfred W. Newman, an associate justice of the supreme court of Wisconsin, departed this life at the city of Madison on the 12th day of January, 1898, his death resulting from accidental injury received the day before.

"Justice Newman was born April 5, 1834, at Durham, Greene county, N. Y. Both on his father's and mother's side he was of English descent, his ancestors in this country being found among the early puritan settlers of New England. He was born upon a farm and grew up as a farmer's boy, receiving such education as the neighborhood schools afforded, and subjected at home and at school to the strict discipline and religious instruction and observances required by the Presbyterian church, of which both his parents were devout members.

"When thirteen years of age he accompanied his father to Albany and was there present in court when his father was examined as a witness, and it is said that he then determined to become a lawyer, and that thereafter all his efforts to obtain an education had that in view.

"When about eighteen years of age he entered an academy at Ithaca and after two terms there he entered the Delaware literary institute at Franklin, N. Y., where he remained also for two terms. He then entered Hamilton college, at Clinton, N. Y., joining the class of 1857, with which, in due course, he was graduated, receiving the degree of A. B. While in college he diligently pursued extra law studies under Professor Theodore W. Dwight, and after graduation he continued the study of law in the office of John Olney, Esq., at Windham Center in Greene county, until admitted to the bar at the general term of the supreme court at Albany, December, 8, 1857.



Engraved by J. P. A. N.

Respt  
G. V. Newman





"In January, 1858, he started for the west. Stopping first at Ahnapee in Kewaunee county, he removed in March, 1858, to Trempealeau, in Trempealeau county, which ever after remained his home until his removal to Madison in 1894.

"He held the office of county judge of Trempealeau county from April, 1860, until January, 1867, when he assumed the office of district attorney, to which he had been elected in the fall of 1866. He was reelected district attorney in 1868, 1872, and 1874, thus holding that position for eight years.

"He was twice elected to the state legislature, serving as member of the assembly in 1863 and senator from the thirty-second district in 1868 and 1869.

"While he was holding the office of district attorney the legislature, in 1876, formed a new judicial circuit—the thirteenth—consisting of the counties of Eau Claire, Buffalo and Trempealeau. In April of that year Mr. Newman was elected judge of this new circuit, and discharged the duties of that position until, in 1878, as the result of legislative action, he was transferred to and became judge of the sixth circuit. He was reelected, without opposition, in 1882 and 1888. The third term for which he was elected expired January, 1, 1895.

"In the spring of 1893, Hon. William Penn Lyon, chief justice of the supreme court, having expressed his intention not to be a candidate for reelection, Judge Newman was called out as a non-partisan candidate and was elected to the position of associate justice. His services began at the opening of the January term, 1894. He had completed four years of his term and was about beginning the fifth year with the opening of the January term, 1898, on the day—January 11th—when he met with the accident which terminated his life.

"During the period of his general practice of the law, from 1858 to 1876, it did not fall to the lot of Judge Newman to take part in litigation so important by reason of the amounts involved or the standing of the parties as to attract general attention to his abilities; but he became well known in the region to which his practice was confined as a well equipped and successful practitioner, and a thorough, sound and

reliable professional adviser, that he was a close student of the philosophy of the law and well grounded in the fundamentals of legal science. His studious habits and eagerness for the acquisition of knowledge were not confined to the law. His general reading was extensive but discriminating in every department of literature.

"In professional as well as private life his conduct and conversation were irreproachable. On the circuit bench he was kindly and patient in his treatment of the bar, and at the same time firm and tenacious in upholding the rights and discharging the full duty of the court. He was prompt and clear in passing upon questions arising in the course of a trial, and freely exercised his powers as a judge to keep the issue necessary to be decided by the court or jury unobscured by irrelevant or immaterial matters.

"Only those who were with him in the consultation room can speak of what he contributed to the solution of the numerous and important questions presented during the four years of his service on the supreme bench; but it is not to be doubted that he displayed in this office the same industry, patience, conscientious research and enlightened judgment which mark his entire career. The opinions of the court which fell to his lot to write are generally brief, but always set out with force and clearness the very points effectually decided and the grounds of the decision.

"The simple statement we have given above of the official positions held by Judge Newman during the forty years of his life in Wisconsin shows the character and influence of the man. In the church, in society, in politics, at the bar and on the bench he gained the confidence of all who approached him, and in every position and relation he fully justified the confidence reposed in him.

"Such confidence came to him because he was pure in his private life; faithful to every trust; a lover of truth and justice; a learned, wise and conscientious judge. At every point of his life career in the state of his adoption his example tended to the maintenance of peace and order, religion, morality and justice.

"The state bar association recognizes that in the death of Justice



Newman the bench has lost an enlightened and upright judge and the state a most useful and exemplary citizen."

In presenting the foregoing memorial J. W. Losey said he was impelled to say a few words for himself concerning the life of Judge Newman, whom he had known well for a period of almost two score years: "For thirty-five years, before moving to Madison, Judge Newman lived in the village of Trempealeau, a place of about five hundred people. He never dealt with great events upon which the eyes of the civilized world were turned. He lived a quiet life, in a quiet village. His nature was loyal and capable, as I know, of the strongest, disinterested and faithful friendships. He was a gentleman in the true sense of the word—I do not mean in outward polish of manner alone, but in the ever-conscious, instinctive sense of propriety. He always seemed to know the right thing. His integrity was of the finest character. He was the friend of all movements in behalf of humanity and education, and his humanity was as broad as the sky. On the bench he struck at once for the heart and justice of the case before him. He was fearless and never swerved from what he believed to be the right, and never thought of consequences to himself. In commenting on a case he once said he 'believed a lawyer must have an educated conscience to succeed permanently.' In a trial his thought steered him through cobwebs and shams and enabled him to go right to the point. I do not believe he was ever conscious of prejudice or resentment toward any one. I practiced before him throughout his judicial career and I never heard an angry word from his lips; but he ruled his court with mailed hand and with dignity. In the performance of duty public clamor never moved him, and 'he would not follow the multitude to do evil.' As a man he was entirely frank and truthful. He had nothing to conceal, either in his private or public life. He had an amiable disposition, founded on gentleness and goodness of heart. He was modest and shrank from all notoriety. He was a person of even and unruffled temper. In all social relations his influence was deeply felt. His manners were simple and pleasing. He was gentle but firm; but gentleness is the surest evidence of firmness. His religious life was ex-

emplary, and yet he never obtruded his beliefs. For thirty years he was at the head of a Sunday school in the village where he lived. Old and young dwelt on his words, and no one can estimate the effect of the lessons in morality inculcated by him in his teachings in this school, nor could those who heard him help being impressed by his earnestness, candid and plain manner of talk, and the principles and lessons inculcated. It is a saying older than the Christian era 'that the life of a nation is in the breath of its children,' and the man who has the patience to voluntarily and persistently teach children is doing work for which but few are fitted and in which but few succeed. Judge Newman endeavored to obey the injunction: 'Fear God and keep his commandments, for this is the whole duty of man.'

"I thus sum up in a few words my estimate of his character. He was not great in the sense that by any great deed he added luster to the historic pages of the state of his adoption, but he had great character in the estimation of all who know him well and in the performance of every duty which pertained to any trust ever cast upon him by his fellow-men. Less ought not to be said; more than the simple truth, could he know, he would thank no man for saying."

J. M. Morrow and Burr W. Jones also made appropriate remarks concerning the life and character of the deceased. The response for the court was made by Chief Justice Cassoday, who said:

"After having served faithfully as a member of this court for four years and while on his way to the capitol to commence the labors of another year, our late Brother Newman became the victim of a cruel accident which might have happened to the young and strong as well as the aged and infirm, and twenty-six hours after he breathed his last. The shock came to his beloved family, the members of this court and the people of the state at large as an appalling tragedy. Two years ago he had the misfortune of having a partial stroke of paralysis which disabled him for some months and left him with his speech somewhat impaired, but otherwise in his normal condition. His efforts by exercise and treatment to regain what he had thus lost were heroic and constant. The night before the fatal accident he

took his long and favorite walk of nearly four miles and while doing so congratulated himself upon the improvement in his speech and movements and upon the fact that from the opening of the court, the 1st of September, he had, on each assignment, been able to complete his opinions on time—an achievement which most of us had failed to accomplish. But his cherished hope of recovery was suddenly blasted by one misstep while in the exercise of special care. During his forty years' residence in this state his life has been an open book, nearly thirty-two years of that time were spent in public office—county judge, district attorney, member of assembly, state senator, besides more than seventeen years as circuit judge. His great popularity may readily be accounted for by those who knew him best. He was always modest, faithful, diligent and efficient in the performance of duty to the very best of his ability. Possessed of courage—moral and physical—equal to any undertaking, he, nevertheless, was naturally very diffident, shrinking from all controversy; rarely aggressive, never offensive. It may be safely assumed that he never actively sought office and seldom, if ever, refused office. He had a kind heart, a generous spirit and a broad Christian charity. In his Trempealeau home he was for many years the center of a large circle of friends who were enriched by his counsel and guided by his judgment. He had a remarkable memory, and on his long walks about the city, as conversation turned from one topic to another, he would illustrate the subject by apt quotations from Homer, Horace and Virgil, as well as English and American poets. It was certainly fitting that Hamilton college—his beloved alma mater—should, in the last year of his life, crown him with the high honor of LL. D.

“A good man with a life full of good works and an abiding Christian faith has passed away. He was the sixth member of this court who has died in the harness—three of them in succession, suddenly and without warning. But the ranks are again closed and the court moves on in duty. Thus, it happens, that in the midst of life we find death; and yet, through the tender mercies of our Heavenly Father, death may be the door which enables the righteous to pass into a more



active and nobler existence. The expressions of esteem which come from the bar are fully indorsed by the court."

In view of the fact that statements have been made in the press to the effect that Judge Newman's election as a member of the supreme court was wholly owing to adventitious circumstances, the editor thinks it proper to add a brief statement of facts within his own knowledge and which are equally well known to others. In the first place, Judge Newman's election was contested by the friends of an able and experienced judge—Charles M. Webb, who was placed in nomination by a convention of lawyers, many of whom were among the leaders of the bar of this state. The result of that contest was that 123,476 votes were cast for Judge Newman and 73,803 for Judge Webb. The facts constituting the adventitious circumstances referred to were that some time before the spring election of 1893 Judge Newman was called to the ninth circuit to try what were known as the "state treasury cases." In those cases the state sought to recover from some of its former treasurers the moneys received by them as interest on state funds deposited by the treasurers in banks. The right of the treasurers to such interest had not previously been questioned, though the public, the state officers and the legislature had full knowledge of the fact that they had regarded such interest as a perquisite of office. Besides seeking to recover the moneys received by the treasurers the state sought also to recover interest thereon, so that the aggregate amount due was large, and inasmuch as the money recovered would reduce taxation for state purposes public interest in the litigation was keen. Judge Newman gave the state judgment and his judgment was affirmed by the supreme court, though not on precisely the grounds on which he proceeded. What influence these facts had in promoting the election of Judge Newman to the highest court in the state need not be considered. But that they were solely responsible therefor is not according to fact. Long before they occurred the bar of his circuit was practically, if not wholly, united in desiring to see him a member of that court. That bar, then as now, comprised men of the highest character and of large profes-

sional attainments, men who had practiced before him for years and who esteemed him highly for his personal qualities and regarded him as the ideal circuit judge. Neither as man nor judge does the memory of Judge Newman require vindication in the judgment of the people of this state, but so much has been written in order that, possibly, the future may not do injustice to his memory.

In politics Judge Newman was a republican, his first vote being cast for John C. Fremont for President. From that time on he never found cause for changing his party allegiance.

Harlow S. Orton became chief justice on the retirement of Judge Lyon and was such at the time of his death. Thereupon Judge Cassoday became the presiding officer of the court. Roujet D. Marshall qualified as justice on the 5th of August, 1895.

#### ROUJET DE LISLE MARSHALL.

R. D. Marshall, justice of the supreme court of the state of Wisconsin, is one of the strongest characters which figure in the history of its bench and bar. Whether considered as a practitioner or a judge his career throughout has evinced not only remarkable energy and untiring industry, but that particular poise of professional character and great reserved force which have marked him as a man of continual advancement.

Judge Marshall was born in Nashua, N. H., on December 26, 1847, his father, Thomas Marshall, who was also a native of the Granite state, being in early life a manufacturer of cotton goods at the above named place.

The American founder of the family was Thomas Marshall, who came from England in 1633, settled in Boston and, as stated in the early records, "kept a ferry from the mill point unto Charlestown and Winnissimmet." One of his sons led a force of militiamen under the doughty old fighter Colonel Josiah Winslow, in his campaign against the Narragansetts, and was killed by the Indians in 1675. The great-grandfather of the judge, Joseph Marshall, was born at Chelmsford, Mass., in 1734, participating in the battle of Lexington, the siege of

Boston, and the battles of Bunker Hill and Bennington. Before the engagement last named he had removed to Ware, N. H., his son, Thomas, and the grandfather of our subject, becoming a resident of Bradford, which was the birthplace of Judge Marshall's father.

His mother, Emeline (Pitkin) Marshall, was of that noted family which numbers among its members William Pitkin, who emigrated from England in 1659 and became the first attorney general of Connecticut; Colonel George Pitkin, who was a leader at the siege of Boston, and William Pitkin, who was one of the drafters of the plan for colonial union adopted at Albany in 1754 and which was the forerunner of the articles of confederation and the national constitution. Emeline Pitkin was born on a Vermont farm in 1820 and was married to Thomas Marshall in 1842.

On account of ill health the latter was obliged to retire from the business of cotton manufacturing, and in 1854 removed with his family from Nashua, N. H., to Delton, Sauk county, Wisconsin. The son, Roujet, was then seven years of age, and in the common schools and an academy of that place he received most of his early education. The Baraboo academy and Lawrence university, at Appleton, also advanced him in the higher branches. He had already commenced the study of law, however, and in March, 1873, was admitted to practice at Baraboo, Wisconsin, previous to his admission to the bar having filled the positions of justice of the peace and member of the school board.

Mr. Marshall's legal career was begun at Chippewa Falls as a partner with N. W. Wheeler, the style of the firm being Wheeler & Marshall. His remarkable strength of body and of mind, his breadth of intellect and his familiarity with the details of the great lumber interests of the Chippewa Valley enabled him to successfully develop a legal business which was as large in volume as it was important in its nature. While carrying on these heavy interests he also served for six years as judge of Chippewa county—from 1876 to 1881—when he severed his connection with Mr. Wheeler.

Judge Marshall next formed a partnership with John J. Jenkins.



which continued until 1889, when he was elected judge of the eleventh judicial circuit, having for the preceding five years (1884-89) served on the board of regents of the state university. As stated by General Edwin E. Bryant in his "History of the Supreme Bench of Wisconsin:" "The business of this circuit was large, involving important litigation. It was greatly increased by the sudden growth of the city of Superior and the extension of numerous railroads into the northern portion of the state, resulting in increase of population and manufacturing interests. Judge Marshall performed this laborious duty with such ability and such energy withal as to indicate to the profession, and the public as well, that the state needed his services in the larger judicial field. He was reëlected to the circuit without opposition in 1894. Upon the death of Chief Justice Orton, in 1895, Judge Marshall was appointed by Governor Upham to the resulting vacancy as associate justice, after nearly seven years' service on the circuit. He entered upon the duties of this place at the September term, 1895. He was elected by the people without opposition in April, 1896, to fill the unexpired term. In the recent April election he was reëlected for the full ten-year term by a unanimous vote, a testimonial of confidence which he has fairly earned (term expires the first Monday in January, 1908). Young, strong, with a capacity for work such as few men possess, a long career of usefulness may well be predicted of this jurist."

Although Judge Marshall's elevation to the bench was an honor which he deeply appreciated, still it involved a financial sacrifice which few of the profession would have so promptly accepted. His practice had largely pertained to corporation law and to real estate and business transactions of great magnitude, the result naturally being that it was most gratifying both as to remuneration and the importance of the legal questions involved. But the unanimity with which he was repeatedly called to the bench placed the honor before him in the light of a duty which should be performed even at the sacrifice of private interests.

In politics Judge Marshall is a republican. He is an adherent to the Methodist faith, although not a member of the church. His wife

was Miss Mary E. Jenkins, of Baraboo, to whom he was married in 1869.

At the request of the editor a member of the bar of Judge Marshall's circuit has written of the latter's career at the bar and on the circuit bench. Of his work on the supreme bench it is not necessary to say anything; his opinions speak for him. The same wonderful industry which characterized him as lawyer and circuit judge has followed him to the supreme court, and there attracts attention even among the very industrious men with whom he is associated.

"During the years that Mr. Marshall was at the bar the immense lumber interests of northern Wisconsin were being developed and organized. As the attorney and confidential adviser of most of the large corporations created to conduct this business Judge Marshall's abilities found a wide field. Combining legal attainments of a high order with the judgment and foresight of the successful man of business, his great energies, for many years prior to his election to the bench, were largely employed in shaping the policies and protecting the legal rights of the numerous lumber companies doing business on the Chippewa and Eau Claire rivers and their tributaries.

"Outside of strictly corporation work the general practice of his firm was likewise large, and for some years prior to 1888 Marshall & Jenkins had the most important and lucrative law practice in the northern portion of the state, if not in the entire state.

"As a practitioner Judge Marshall was noted for his careful preparation of cases, remarkable grasp of details, familiarity with legal principles, stubborn tenacity of purpose and unyielding loyalty to the interest of his clients. As a trial lawyer he was solid rather than showy. Although more than ordinarily successful as a jury lawyer, he was not a forensic orator within the usual meaning of that term. He secured verdicts by force of clear and logical presentation of evidence rather than by any trick of eloquence in reviewing it before the jury. His career on the circuit bench was an enviable one. He was elected judge of the eleventh judicial circuit in the spring of 1887, after a contest somewhat unique in the history of the state. At that time the

anti-corporation fever was raging with much vehemence in northern Wisconsin and a vigorous campaign was made against Mr. Marshall on the ground that he was a corporation lawyer. He and his supporters accepted the issue tendered by the opposition and, Mr. Marshall's ability being conceded by all, the question whether a corporation lawyer was disqualified on that account for holding judicial office was fought out with great vigor by the voters of the circuit. Mr. Marshall's election by an overwhelming majority showed that it is not always easy to stampede the people by a senseless cry, and his subsequent conduct on the bench proved how senseless indeed the cry of his opponents had been. If any just criticism could be made of his impartiality as a judge it was not that he favored corporations. The bent of his mind seemed rather to be towards holding them to the strictest accountability, and he had not long presided as judge before those who had been most bitter in opposition were loudest in praise of his independence and impartiality. The eleventh judicial circuit is the largest in area in the state and has always been a field of much and important litigation. At the time of Mr. Marshall's election to the judgeship the amount of legal business, which had for some years been accumulating in it, was very large, while the remarkable development of Douglas and other of the northern counties, then just setting in, added greatly to the natural volume of court business. Judge Marshall's well known capacity for work was for several years put to the severest test. It is a matter of record that during his first term of office more jury cases were disposed of in his court than in any two circuits in the state combined. Nor did the character of his work suffer by comparison with that of the learned judge whom he succeeded or of the very able judges then presiding over the other judicial circuits of the state.

"He possesses the judicial temperament. As a judge he was clear and cool headed, free from marked prejudices, unmoved by popular clamor or opinion, quick in decision, accurate and logical in expression, and, withal, possessing that impressive dignity of conduct and carriage so essential to round out the popular conception of the model judge."

The untimely death of Judge Newman caused the next change in



the personnel of the court and Charles V. Bardeen was appointed his successor.

#### CHARLES VALDO BARDEEN.

Charles V. Bardeen, a justice of the supreme court, is a native of the state of New York, being born in Brookfield, Madison county, on September 23, 1850. His parents were Rasselas and Maria (Palmer) Bardeen, his father being a farmer and migrating to the town of Albion, Dane county, Wisconsin, when the boy was but five years of age. Here his younger days were passed, and, after he had graduated from the district school and the Albion academy, he naturally gravitated to the University of Wisconsin. Although he entered as a junior student, on account of failing eyesight he was unable to complete his course. For a time after leaving college, until December, 1872, he taught school at different localities in Dane county, but at that time sought a change of climate and new scenes in Colorado. For two years he engaged in various occupations at Colorado Springs, Pueblo and Del Norte, when he returned to his adopted state.

Upon locating anew in Wisconsin, Mr. Bardeen commenced the realization of a long deferred ambition to enter the domain of the law. Entering the office of J. P. Towne, of Edgerton, as a student, he industriously pursued his studies, but completed his course in the law department of the state university, graduating therefrom in June, 1875. His first practice was at Wausau, Marathon county, as a partner of Roger C. Spooner, and under the firm name of Spooner & Bardeen this partnership continued for about one and a half years, when C. H. Mueller became an associate. After a short time the new firm was dissolved, and Judge Bardeen practiced alone until he formed a legal connection with General John A. Kellogg, which continued until the latter's death in 1882. Soon thereafter he formed a partnership with W. H. Mylrea, and after about one year Louis Marchetti was received into the firm, which was dissolved on January 1, 1892, when Judge Bardeen qualified as judge of the newly formed sixteenth circuit. He was reëlected judge in April, 1897, and served until his appointment to

the supreme bench, to succeed Judge Newman, on February 4, 1898. In April, 1898, he was elected, without opposition, for the unexpired portion of Judge Newman's term, or until January, 1904.

In view of the above record it is evident that Judge Bardeen has been remarkably successful both as a practitioner and as a fair-minded and learned counselor. As a fact he has been employed in much heavy and important litigation, both civil and criminal. One of the most noted cases of the latter nature in which he has been engaged was the Mead murder trial, held at Waupaca. Whatever, in fact, he has done has been accomplished conscientiously and ably, and his steady advancement from the position of a hard-working attorney to the highest judicial honor in the state is sufficient evidence that his worth has been recognized by the people and the profession.

Judge Bardeen is a republican, but has never been a politician in the narrow sense of the word. He is a Mason of high degree, being a member of the Forest Lodge, No. 130; Wausau Chapter 51, and St. Omer Commandery, K. T., No. 19. In 1892 he was elected grand high priest of Wisconsin, R. A. M. Married on June 17, 1876, to Frances H. Miller, of Albion, he has had three children: Eleanor, Charles V., Jr., and Florence.

As a lawyer and judge of the circuit court Judge Bardeen had established such a reputation for industry, good judgment, knowledge of the law and ability to apply its principles to the ever-varying states of facts which are disclosed in litigated cases that not only the bar of his circuit but the bars of adjoining circuits and lawyers in various other parts of the state who had tried causes before him were enthusiastic in their endorsement of him as worthy to become a member of the supreme court. Some written opinions of his as circuit judge in causes appealed showed a measure of ability and degree of industry which added largely to his reputation throughout the state. Judge Bardeen's work as a member of the supreme court thoroughly sustains the reputation he made on the circuit bench and the claims of his friends as to his fitness for the place he occupies.

Sixteen persons have been members of the supreme court since its organization as a separate tribunal June 1, 1853. Of these Judge Cole served the longest—from June 19, 1855, to the first Monday in January, 1892. Judge Lyon's period of service was the next in length—from January 20, 1871, to the first Monday in January, 1894. Judge Paine's is the only case where an interregnum intervened between two periods of service. No person appointed to fill a vacancy has failed of an election by the people. But one judge has failed of reelection where he has been a candidate therefor before the people—Judge Crawford. Judge Smith is understood to have much desired reelection, but was set aside by the managers and leading men of his party on account of his state-rights views. But four men have been chief justice during the time that office was filled by election—Whiton, Dixon, Ryan, Cole. Of the members of the court six have died in office—Whiton, Ryan, Paine, Taylor, Orton and Newman. There have been three resignations—Dixon, Downer and Paine. But two former members of the court are now living—Cole and Lyon. No member of the court, while serving or afterward, has been elected or appointed to high official station, though Judge Lyon, after a period of rest, served the state with great acceptability in the responsible position of a member of the state board charged with the duty of maintaining and supervising the charitable, correctional and penal institutions of the state.

Four persons have occupied the position of clerk of the supreme court since the formation of the state government—J. R. Brigham, appointed August term, 1848; Samuel W. Beale, appointed December 12, 1851; La Fayette Kellogg, appointed June 1, 1853, and Clarence Kellogg, appointed June 11, 1878. During that time five persons have discharged the duty of reporter—D. H. Chandler, 1849-1852; Abram D. Smith, 1853-1860; Philip L. Spooner, 1860-1862; O. M. Conover, 1862-1883; F. K. Conover, 1883-1898.



## CHAPTER VIII.

### JOHN R. BENNETT'S ADDRESS TO THE STATE BAR ASSOCIATION.

On the 7th, 8th and 9th of June, 1898, the fiftieth anniversary of the organization of the state of Wisconsin was observed at Madison. Various meetings and reunions were held. On the 8th a meeting of the state bar association was held in the supreme court room, presided over by the president of the association, John B. Cassoday, the chief justice of that court. Seated with him on the judges' bench were Orsamus Cole and William P. Lyon, former members of that court, and John R. Bennett, judge of the twelfth circuit. The latter delivered the following address:

Mr. President and Gentlemen of the State Bar Association:

I commenced the study of law on the 27th day of April, 1844, with Western W. Wager, of Brownville, Jefferson county, New York, reading with him for six months, teaching school the following winter for twenty-four dollars a month, boarding myself; and on the 21st of April, 1845, resumed the study of law with Dyre N. Burnham, of Sacketts Harbor, New York, with whom I continued my professional studies until the 2d day of October, 1848, when I started for Wisconsin. I little dreamed when I was reading law at Sacketts Harbor that there was residing there, at Madison Barracks, a young captain in the United States army, then about 23 years of age, destined to become the greatest general of his time and one of the greatest of any age or country; and also to become the President of the United States for eight years. But such was the fact. For Captain Ulysses S. Grant was then at Sacketts Harbor in Madison Barracks. And Simon B. Buckner was also there, who, as brigadier general in the Confederate states' army, on the 16th day of February, 1862, surrendered Fort Donelson to then Brigadier General U. S. Grant, with about 15,000 prisoners. I did not know

Grant at Sacketts Harbor, but did know Buckner, and often saw him walking the streets of the village, erect and soldier-like, not looking to the right or left, but carrying himself like most of those graduating at West Point.

I also knew Charles S. Lovell at Sacketts Harbor, who became a Union general during the rebellion, and Nathaniel Lyon, quite intimately, as he belonged to our young men's association, and took part in their debates. He visited Sanford A. Hudson and myself just before the breaking out of the rebellion. He was killed at the battle of Springfield, Missouri, or, as it is called, the battle of Wilson's Creek, on the 10th day of August, 1861. Had he lived until the close of the rebellion he undoubtedly would have become one of the great Union generals, for no one had accomplished more than he at the time of his death.

On the 13th day of October, 1848, as the shades of evening were settling down upon the landscape, I reached Janesville, then a little hamlet of about 1,000 inhabitants, stopping at the Janesville "Stage House," a two-story frame building, where now stands the fine four-story brick hotel, the "Myers House." I greatly admired the beauty and fertility of the surrounding country and the intelligence and high character of the people dwelling there; so much so that I at once concluded to cast my lot with them, and have ever since remained in Janesville.

I have been unable to find what the population of the state was in 1848, but in 1840 it was 30,000; in 1847, 210,516; in 1850, 305,391. So that I presume in 1848 the population was about 225,000. At all events, at the general election in November, 1848, the state elected three members of Congress; we were in the second district, and that fall three candidates were running for Congress in that district, viz., A. Hyatt Smith, hunker democrat, of Janesville; General George W. Crabb, free soil democrat, also of Janesville, and Hon. Orsamus Cole, of Potosi, Grant county, the whig candidate.

On the 16th day of October, 1848, only three days after I arrived in Janesville, there was a political meeting of the whigs held there, which was addressed by Orsamus Cole, the whig candidate, and the

gallant and eloquent Edward D. Baker, who fell at the disastrous assault at Ball's Bluff, while bravely leading his brigade, on the 21st day of October, 1861. As he mounted the speaker's platform every act and motion of his showed the great orator that he was. One can never forget the glowing tribute he paid to his old commander, Major General Zachary Taylor, under whom he fought in the war between this country and Mexico. And when he came to speak of local matters, he said "I greatly admire your exceedingly beautiful country and the equally noble people who reside here. I like the way you do things, for I see you have put a live Cole on the back of a Crabb; and I prophesy that the Crabb will crawfish before the end of the contest." And he did. It seems hardly necessary to add that Cole was elected by a good majority, and that he made a valuable and useful member of Congress, representing his state with honor to himself and entire satisfaction to the people; so that soon after they called him to a higher and more honorable position in the state. For on the 19th day of June, 1855, he was chosen associate justice of the supreme court of the state, holding the office until November 11th, 1880, when he was made chief justice; holding the latter position until the first Monday in January, 1892, making a period of continuous judicial service of more than thirty-six and one-half years. It seldom falls to the lot of any lawyer to continue in so high and responsible an office so many years. It shows that the people of the state appreciated the purity of his life, and the eminent qualifications he brought to the exalted position he so admirably filled. It has been said, "It is always unsafe to praise the living. It is only when death has sealed life that we can speak with confidence." I hardly agree with the above statement, and believe we can say now with the greatest assurance that the public life of the Honorable Orsamus Cole has been a long trail of "honorable memories." It has ever been above reproach and without the slightest stain. His great learning in the law, his entire impartiality, his clearness of perception and soundness of judgment made him a model judge; and the state will long continue to receive the benefit of his learned and upright judicial career.



At the May term of the circuit court for Rock county, in the year 1849, I first made the acquaintance of the Honorable Matthew H. Carpenter. He was then little past twenty-four years of age. He undoubtedly became more learned in the law and riper in scholarship later in life, but never more witty and brilliant than he was then. He argued four certioraries with great clearness and brevity, ending each argument with the ring of a hammer striking an anvil. Judge Whiton took the papers in the four cases, saying he would decide them the following morning. The next day at the opening of court he took up one case and decided it in favor of Carpenter; the next one against him; and the third one in his favor, and the fourth against him. Carpenter turned to Jordan and myself, who were sitting quite near him, in a whisper said, "By Jupiter, boys, I wish I had another case, as I would like to see what he would do with it." But I think I should state that Whiton's decisions in the four cases were so correct and satisfactory that not one of them was ever taken to the supreme court.

Soon after reaching Janesville I made the acquaintance of Charles Stewart Jordan, a son of Ambrose S. Jordan, one of the great lawyers of New York, and attorney general of that state during the anti-rent excitement. Charles S. Jordan was, at the time I made his acquaintance, a partner of A. Hyatt Smith, at that time one of the most influential and important personages of the state. Jordan was one of the revisers of the revised statutes of 1849. And I desire to say in this presence that I ever regarded him as one of the most brilliant and able men that I have ever met in Wisconsin or anywhere else. He was a great jury lawyer, and equally strong before the court. And in construing statutes of obscure or doubtful meaning I have never seen his superior. I was his partner from 1852 to about 1856, when he left the state to go into business with his aged father in the city of New York; but he remained there only a short time when he came west again, stopping a short time with his father's brother at Morris, Illinois, but finally settled in Chicago, where he died about fourteen years ago.

The first time I saw him after he came to Chicago I said to him, "Jordan, I have been looking in the Chicago papers, hoping to find

you engaged in some of the trials of that city, well knowing if you once get a foothold you were abundantly able to sustain yourself." Looking me full in the face, he replied, sadly, "No, John, I have sinned away 'the day of grace.' "

He and Carpenter were great personal friends, and were always together when they could be. They were frequently heard discussing questions of law. Carpenter generally gave up to the more weighty and conclusive arguments of his friend. And I am firmly persuaded that in original mental endowments Jordan was the superior man; but in their subsequent careers, Carpenter far excelled him as a lawyer and statesman; but to one who knew them both this is readily accounted for.

Soon after Janesville became a city a public meeting was called for the purpose of voting aid to the "Rock River Valley Union railroad," now the Chicago & Northwestern. The more wealthy men of the city were violently opposed to this. At this meeting a gentleman of considerable wealth, who had been in the habit of loaning money at fifty per cent, made a strong argument against the proposition, and when he sat down Jordan was called upon to reply to him. As he took the platform, this wealthy gentleman noticing that his shoes were muddy shouted out in loud tone, "Take off your shoes!" Jordan instantly replied, "God said to Moses at the burning bush 'take off thy shoes from off thy feet, for the place whereon thou standest is holy ground.' My friend is mistaken in thinking that this hall is like the place on which Moses was standing, holy ground. But there is still another more important distinction. That command was given to Moses by God Himself. And I presume my friend has not carried his self-deception to the extent of thinking he is God Almighty. And if he has not, he is inexcusable for giving any such command to me."

This gentleman had been quite severe upon those who favored voting aid to the company. Jordan proceeded with his argument, but was soon interrupted again by the same gentleman; Jordan then said, "I desire to call my friend's attention to one of the Psalms of David which seems appropriate to his case," and repeated the 15th Psalm as follows:

"Lord, who shall abide in thy tabernacle? who shall dwell in thy holy hill?

"He that walketh uprightly and speaketh the truth in his heart.

"He that backbiteth not with his tongue, nor doeth evil to his neighbor, nor taketh up a reproach against his neighbor.

"In whose eyes a vile person is contemned; but he honoreth them that fear the Lord. He that sweareth to his own hurt, and changeth not.

"He that putteth not out his money to usury," and as the last words fell from his lips he pointed his finger at his opponent. The effect was electrical, and a storm of applause burst from the people in every part of the hall. The debate ended there, Jordan carrying his point by a very large majority.

And I will further say that while Jordan remained in Rock county, there was hardly an important contested case in which he was not employed, always taking a leading part.

He was a thorough and appreciating reader of Shakespeare and one of the finest readers of the poet that I ever listened to. One day he was reading the Merchant of Venice in our office, and became deeply interested in the play, and coming to the place where Portia, as judge, says:

"Come, merchant, have you anything to say?"

And Antonio replies:

"But little, I am armed and well prepared;  
Give me your hand, Bassanio, fare you well!  
Grieve not that I am fallen to this for you;  
For herein fortune shows herself more kind  
Than is her custom; it is still her use  
To let the wretched man outlive his wealth,  
To view with hollow eye and wrinkled brow  
An age of poverty; from which lingering penance  
Of such misery doth she cut me off.  
Commend me to your honorable wife;  
Tell her the process of Antonio's end;  
Say how I loved you, speak me fair in death;



And when the tale is told, bid her be judge,  
 Whether Bassanio had not once a love.  
 Repent not that you shall lose your friend,  
 And he repents not that he pays your debt;  
 For if the Jew do cut but deep enough,  
 I'll pay it instantly with all my heart."

As he reached the conclusion of Antonio's reply to Judge Portia's question, his feelings overcame him, and he could not proceed further, and with tearful eyes and in broken accents he said, "Boys, Antonio is busted!"

Another instance which I fear you will hardly think worth repeating, I will call attention to, as it shows the poetic temperament of the man. He and I had been eighteen miles out to Magnolia to try a case involving the fraudulent transfer of personal property, trying it all day and all night, until about four o'clock in the morning, when we started home in our carriage. The morning was calm and beautiful, the landscape covered with a slight haze. Jordan, being weary, had fallen asleep, when the carriage gave a sudden jolt, causing him to open his eyes, and looking east, he saw the sun just rising above the "Magnolia Hills," when he exclaimed, "Night's candles are burnt out, and jocund day stands tiptoe on the misty mountain tops," and immediately went to sleep again.

You may think I have dwelt longer in speaking of him than the occasion calls for. But being warmly attached to him on account of his kind and gentle nature, as well as his brilliant abilities and manly qualities, and not knowing that a single line has ever been written in this state concerning him, I could say no less.

As before suggested, I first saw Judge Whiton presiding as a circuit judge at the May term of the circuit court for Rock county in 1849. He looked, spoke and acted like the almost perfect judge that he really was. I have seen many men on the bench, but never saw one excel him in noble judicial bearing. He was then about forty-five years of age, having been born on the 2d day of June, 1805. He seemed to me then much older than he was, but no wiser than I then believed and

afterwards knew him to be. He resembled in learning, impartiality, clearness of judgment and great dignity of manner that greatest jurist of the northwest, the late Thomas Drummond of Chicago, for more than thirty-four years United States district and circuit judge for the northern district of Illinois, more than any other judge to whom I can compare him.

He was circuit judge only about four years, being elected in September, 1848; and in 1853, when a separate supreme court was organized in the state, he was chosen chief justice and held that position until his death, April 12th, 1859, so that he was not quite fifty-four years old at the time of his death. I looked upon him then as quite an aged man, and can hardly realize that he died so young, for now I look upon a man of only fifty years as quite a young man. I sat up with him one week before his death. He knew I was coming, and his wife said, became quite anxious before I reached there, which was some time after dark. As I went to his bedside, he smiled, reached out his hand, taking hold of mine, and giving it a gentle pressure, from all which I perceived that he knew me perfectly well; but he had so far lost the power of speech, that while he tried to talk, I could not understand a word he said, but his wife could, and explained the words he used. I was to sit up with him again in one week, but on the afternoon of that day death relieved him from further suffering and pain. I heard a lawyer of considerable wealth and good standing in the profession argue a question at length before him, to which the judge paid the strictest attention, and when the counsel took his seat, Judge Whiton decided the question against him, and while proceeding to give his reasons for the decision, the counsel again sprang to his feet, and said with considerable vehemence, "Your honor, I am astounded at your decision; I repeat, I am astounded at your decision; it is in conflict with all the authorities to which I have called your attention!" The judge waited until he took his seat, and then quietly remarked, "Mr. ———, I cannot say that I am astounded at anything you have said; but will say that I will not sit here and listen to such language again with impunity." This re-

buke was quite sufficient, and the lawyer was never known again to offend in like manner.

In 1856 or 1857 I had a criminal case pending in the supreme court, in which my client had been convicted of stealing a plow, in the circuit court for Rock county, held by A. S. Collins, then circuit judge for Dane county. After the jury came in and delivered their verdict I requested that the jury be polled. This being done, one of them said while he had agreed to the verdict, he had doubts about the defendant's guilt. The judge told him he need not argue the case, but should give a direct answer to the question, "Was that, and is that still your verdict?" The juror then answered, "I will say yes, because I subscribed to it." The judge again told the juror that it was his duty to give a direct answer, yes or no, and the juror answered yes.

While the case was pending in the supreme court my client, without my knowledge, called upon Judge Whiton at his home in Janesville, and coming into my office soon after, with a frightened look and manner, gave me this account of his interview with the judge: "I called on the judge and asked him when my case would come on, and he informed me when the term commenced. I then took out a twenty dollar gold piece and handed him, expecting he would take about three dollars for his trouble and hand me the balance, but he flew mad in a moment, and with intense indignation said: 'You scoundrel! You offer me a bribe? Get out of my house quick or I will kick you out,' " and the client added, "I left as soon as possible." And he then said further, "The judge was awful mad, and do you think he will now pitch into me up in the supreme court?" I replied, "No, he will decide your case according to law, notwithstanding your bad, or at least, your questionable conduct at his house." Soon after my client left the office Judge Whiton called on me with an indignant and honest severity beaming from every feature, and said, "Mr. Bennett, what kind of a client have you got? Did you know he was coming to my house?" I said, "Your honor, I did not," saying further, "He has just left the office greatly frightened;" and I gave him an account of the interview as related to me by the client. The judge then stated that he came to his house, and said he had a case



in my court, and asked when it would be heard, and I told him, as near as I could. Then he added, "Well, judge, I suppose it will go pretty much as you say up there," at the same time handing me a twenty dollar gold piece, when I said "You scoundrel! get out of my house quick, or I will kick you out." I may add that Judge Whiton did not pitch in against my client in the supreme court, but all the judges were unanimous for reversal.

In the year 1857 I had occasion to go to Vernon county to try a case for a man named Plummer, of New Hampshire, a partner of a gentleman in that county, the partnership being engaged in the manufacture of lime and barrels. After the evidence was all in I requested the court to give an instruction to the jury that "it was only in a business strictly mercantile that one partner could bind the other by giving a promissory note." Judge Gale, the presiding judge, thinking of ordinary merchants, and not seeing that the business in which the firm was engaged was not strictly mercantile, said "Mr. Bennett, I do not think that is the law." I said, "Your honor, there is no question but what that is the law," and taking up Smith's Mercantile Law which I had with me, I read from it the very language of the instruction I had requested him to give. He hesitated a moment, moving uneasily on the bench, and said, "I will bet you fifty dollars that is not the law." I replied, "It is against my principles to bet, and besides, I was not aware that legal questions in our courts were settled in that manner." LeRoy Tucker, a lawyer of La Crosse, who was present, said I should have taken the bet, as then the judge would have been compelled to back down as he would not have dared to make bets while sitting as judge. At the supper table Judge Gale said to me, "I owe you an apology; I had no idea of betting, but made that expression to show my strong dissent from your position." I replied, "That is the way I understood you."

In the year 1852 the Honorable I. C. Sloan came from the east and settled in Janesville, and in 1854 his equally distinguished brother, A. Scott Sloan, came to the state and settled at Beaver Dam. You all know the great ability and learning of those two lawyers. I do not remember that I ever personally met a stronger lawyer than I. C. Sloan. But I

do not intend to dwell upon the great ability of either; but mention them here for the purpose of relating an anecdote of Abraham Lincoln respecting them, which I have never seen in print. In 1860 we had only three members of Congress from this state, and A. Scott Sloan was elected the same year that Lincoln was elected President; they were both over six feet and three inches tall, and a very warm friendship sprang up between them. After the census of 1860, we had six members, and I. C. Sloan, who was at least an inch shorter than his brother, was elected in 1862, and represented part of the district his brother had represented. I. C. Sloan went to Washington, and was introduced to the President by his brother, and as they both stood before Lincoln he said he saw the President running his eyes up and down them, when he smilingly said, addressing the shorter of the two, "Mr. Sloan, it seems to me the republicans of Wisconsin are lowering somewhat their standard of republicanism." He replied, "No, Mr. President, we think we are keeping our banners as high as ever," when the President replied, "Ah! Mr. Sloan, you know, we read that those who had seen the new temple only rejoiced, while those who had seen both the old and the new wept." "Well, Sloan," said I, "what did you say to that great compliment to you, and the greater one to your brother?" He replied, "I did not know whether the President was quoting from profane or sacred history, and did not know what reply to make, and therefore said nothing."

We are met here to take part in the semi-centennial celebration of the state, and what miraculous changes have taken place all over the grand commonwealth in the last fifty years. The little village where I located, of one thousand inhabitants, has become a city of between thirteen and fourteen thousand, and the population of the state has increased from 225,000 to over 2,000,000. And all over the state the increase in population, in institutions of learning, in wealth and power, has been equally great and marvelous. And we, unlike the seven noble youths of Ephesus, called the Seven Sleepers, who fled from persecution to a cave in the side of a mountain, in the reign of Publius Decius, the Roman emperor, known as the Christian persecutor, and were

walled in and remained there one hundred and eighty-seven years, where their lives, as the legend tells us, were preserved in a miraculous manner by the power of God; and when they came forth were greatly astonished at the great changes that everywhere met their eyes, they supposing they had slept only a few hours, while we, unlike these sleepers, during the passing of the last fifty years, have been awake, taking cognizance of the wonderful changes constantly going on. And I think it should be a source of great gratification to the legal profession in this state to know that they have been a most powerful factor in this great and rapid development. For, without good laws and a wise and just administration of them, there can never be any substantial and permanent improvement and prosperity in the state. And everyone knows that the constitution and laws of the state are mainly the result of the labor of the members of the bar. And the wise, impartial and just administration of those laws by the lawyers and judges of the state tend equally to advance its great prosperity. But the old judges and the old lawyers who first took part in forming the constitution and laws of this state have passed or are rapidly passing away.

Abraham Lincoln, at the close of his address delivered before the state agricultural society on the 30th day of September, 1859, said, that a certain eastern monarch once charged his wise men to invent for him a sentence to be ever in view, and which should be true and appropriate in all times and situations. And they presented him these words: "And this, too, shall pass away!" How much it expresses! How chastening in the hour of pride! How consoling in the depths of affliction! "And yet," he added, "let us believe it is not quite true. Let us hope, rather by cultivating the physical world beneath and around us, and the intellectual and moral world within us, we shall produce a state, rich, powerful and prosperous, and a people highly moral, intellectual and generous, possessing political prosperity and happiness, and which, while the earth endures, shall not pass away!"



## CHAPTER IX.

### WISCONSIN LEGAL BIBLIOGRAPHY.

BY JOHN R. BERRYMAN.

Since Wisconsin has passed the fiftieth year of her statehood, it may be worth while to note what has been accomplished by her citizens in the line of legal authorship. During the first thirty years of the state's existence but little was attempted in that direction, perhaps, for the reason that the men of those times were less inclined to undertake the confinement and seclusion which are necessary to the production of works on legal topics than are those of these days. The earlier times were more stirring than the later. Ambitious men, striving for fame and fortune, are not enamored of the hidden toil and meager compensation which are the lot of authors of law books. The road to popular fame or to fortune does not lie in that direction. He who seeks the plaudits of the multitude or the approval of the people must look elsewhere than in the library of him who is testing, arranging, harmonizing and trying to formulate principles from the multitudinous decisions of the courts of fifty or sixty jurisdictions. But all men do not seek distinction along these lines. There are those to whom the quiet of the library and the patient application needed to prepare a work on a legal topic is agreeable, far more so than thronging, surging crowds and the plaudits they bestow upon the orator who tickles their fancy or stirs their emotions. The number of such in Wisconsin has increased of late years, and will doubtless continue to increase in augmented ratio. It is not the purpose of the writer to review the productions of the law writers of the state; but rather to place before the reader the substance of what has been done by them.

#### REVISED STATUTES.

Of first importance to the legal profession and the public is the written law; especially as it appears periodically in the form of revisions

or compilations. Books of the first class are prepared by commissioners or revisers appointed by the legislature or pursuant to its authority. Of these, Wisconsin, as territory and state, has had five. The first revision was provided for by a resolution adopted by the territorial legislature in December, 1838, and which appointed Messrs. Morgan L. Martin, Marshall M. Strong and James Collins, of the council (the upper house), and Messrs. Edward V. Whiton, B. Shackelford and Augustus Story, of the house of representatives, a committee to revise the laws of the territory, and report the result of their labors at an adjourned session. This committee, during the recess of the legislature, which continued only about thirty days, prepared, and, at the session which succeeded, reported numerous bills, which, after being amended by the legislature, were enacted and composed the principal part of the statutes of 1839, a volume, including the index, of 456 pages.

The circumstances under which these statutes were prepared necessarily precluded them from being a revision in the sense in which that term is now used. It lacks a table of contents; is not divided into chapters, nor is the matter so classified as to meet the demands of the present time. But a fair consideration of the conditions under which the committee did its work leaves no room to doubt the capacity or industry of its members. Indeed, so far as some of them are concerned, it may be questioned whether the intervening years have produced their superiors; without any disrespect to the memory of the other members of the committee, this is especially true of Edward V. Whiton and Marshall M. Strong. The duty of superintending the printing, making the marginal notes and index was devolved by the legislature upon Mr. Whiton. The time allowed him for that purpose was brief, the act appointing him having been passed March 11, and his task having been completed, apparently, June 15.

The revisers of 1839 were all members of the legislature of 1838. Morgan L. Martin was a member of the council from Brown county; Marshall M. Strong, from Racine county, James Collins, from Iowa county; Edward V. Whiton was a member of the house from Rock and

Walworth counties; Barlow Shackelford, from Brown county, and Augustus Story, from Milwaukee and Washington counties.

The genesis of the revised statutes of 1849 is found in an act approved July 13, 1848, which provided for the selection of three commissioners by the senate and assembly whose duty it was to prepare and lay before the next legislature a bill revising the statutes; provision was made for filling any vacancy which might occur in the commission, the governor being authorized to appoint. The compensation of each commissioner was fixed at three dollars for each day while engaged in the work, and the employment of a clerk at two dollars per day was authorized. In July, 1848, the legislature elected M. Frank, Charles S. Jordan and A. W. Randall commissioners; the latter, declining to act, Charles M. Baker was appointed by the governor in his stead. James Simmons served as clerk to the commission.

The commissioners began their labors in August, 1848. Owing to the fact that the constitution had been recently adopted and that but a comparatively small body of law had been enacted under it, they found their labors so great that the conclusion was early reached that the time allotted for doing the work was insufficient to permit a revision of the entire body of the laws; they, therefore, began upon and completed such parts as most needed change by reason of the altered conditions arising from statehood. In January, 1849, sixty-four chapters were reported to the legislature. These, with the exception of a very few of minor importance, were adopted by the legislature, generally without any, or with but slight, amendment. The commissioners continued their work during the session of the legislature, reporting chapters from time to time as they were completed. In order to secure the printing of such laws as could not be revised, for lack of time, in the same volume as the parts thereof which were revised, the legislature appointed a joint committee consisting of M. M. Cothren, George W. Lakin and William M. Dennis, on the part of the senate, and James B. Cross, Marshall M. Strong, Morgan L. Noble, Paul Crandall and Timothy Burns, on the part of the assembly, to compile and report such laws as the commissioners should be unable to revise and report during the



session. The result of the labors of the commissioners and the committee was the Revised Statutes of 1849.

Mr. Baker was appointed to superintend the printing of the statutes, make marginal notes and an index. He was given authority to arrange the chapters into parts and titles as he thought proper, to rearrange the order of the sections or transpose them from one chapter to another, whenever it would not alter the meaning of the law, and the proper order of arrangement required it. This authority he freely used, as the preface indicates, though, probably, he never exceeded it. It seems, in the light of recent adjudications, that it came dangerously near being a delegation of legislative power. But there is no record that such an objection was ever made.

These statutes, in arrangement and general form, were far in advance of those of 1839, being divided into parts, titles and chapters, and the last being subdivided into subtitles and sections.

Of the revisers of 1849 Judge Baker is the best known; a sketch of his life appears elsewhere in this work. Mr. Jordan was a member of the Rock county bar; a lawyer of ability and a man of great wit. Like many of the profession in his day he was somewhat given to conviviality. He left the state a good many years ago, and about the time of the Chicago fire was practicing there. It is understood that he has been dead some years. Michael Frank, the other member of the commission, was not a lawyer, though he had studied law somewhat in his youth. He is best known as the father of the present school system of this state. He was born in Virgil, Cortland county, New York, December 12, 1804; his father was a German, and served in the revolutionary army. The son lived his first twenty years on a farm; was much given to study and political discussion; he organized the young people of his section into societies for mutual improvement; he aided in the organization of the first Sunday school in central New York; was active in the advocacy of temperance, and adhered to his convictions to the extent of resigning the captaincy of an artillery company rather than abandon them; the anti-slavery cause also found in him a warm champion. From the time he attained his majority until he left his native state he

was inspector of common schools, and for a time served as county supervisor. In 1839 he came to Wisconsin, settling at Southport (now Kenosha), where the remainder of his days were passed. Two months after his arrival he succeeded in organizing a lyceum; he was one of the speakers at the first territorial temperance convention, held at East Troy, Walworth county, in February, 1840, and chairman of the committee appointed to prepare an address to the people; in June, 1840, he became joint editor with C. Latham Sholes of the Southport Telegraph and maintained his connection with that paper many years. He was the first president of the village of Southport (1840) and the first mayor of Kenosha (1850). In 1840 he was commissioned by Governor Dodge colonel of militia; he served in the upper house of the territorial legislature in 1843, 1844, 1845 and 1846, and in the assembly in 1861. It is said that he was the first agitator in favor of the admission of the territory as a state. In 1840 he began the agitation in his paper of the subject of free schools, and in 1843 introduced a bill on that subject, which failed of passage; in 1845 he succeeded in obtaining the enactment of a law permitting the establishment of a free school in the village of Southport, subject to approval of the electors. At the first meeting held to vote on the proposition the excitement was so intense that a vote could not be taken. The ground of opposition was that it would be unjust to tax the property of those who had no children to pay for the education of the children of other persons. At a second meeting the law was approved, and the first free school in Wisconsin was established at Southport.

Colonel Frank's especial duty as a member of the commission to revise the Statutes of 1849 was the preparation of a school code. The chapter prepared by him was antagonized by Marshall M. Strong on the ground that the commissioners had exceeded their power, which was to revise existing laws and not to draft and recommend the enactment of new ones. The answer was that the constitution had made existing school laws inapplicable, and that there was nothing to revise.

The other principal facts in the career of Colonel Frank must be passed over rapidly. In 1850 he was editor of the Wisconsin Journal of

Education; in 1861 was appointed postmaster at Kenosha and held the office five and a half years; was a regent of the state university six years; county treasurer four years, and held other local offices; attended the state convention at which the republican party was organized, and remained a member of it; in 1869 bought the Beloit Free Press, but did not remain owner of it long; occupied a position in the treasury department at Washington for twelve and a half years; returned to Kenosha in 1882 and assumed the editorship of the Telegraph, in which position he remained until early in 1889. His death occurred December 26, 1894.

The adoption of the code of procedure in 1856 made a revision of the statutes necessary; accordingly, at the adjourned session of the legislature which met September 3, 1856, and adjourned October 14, 1856, a law was enacted authorizing the governor to appoint three revisers, whose duty was declared to be to collect, compile and digest the general laws; they were to report to the legislature as soon as may be, and to receive such compensation as the legislature may deem just and reasonable, not less than five dollars per day for not exceeding two hundred days' service. The act directed that the appointments should be made without delay. The revisers were David Taylor, Samuel J. Todd and F. S. Lovell. The date of their appointment is not shown in the preface to the revised statutes of 1858, but it is stated there that they entered upon the performance of their duties in the spring of 1858, and that the time limited for completion of the work was very short (about twenty-eight weeks); the time for which the legislature had provided for compensation.

The revisers submitted their report early in the legislative session of 1858. "It was not" their "object or intention to change the system under which the state had grown up, but to endeavor to simplify and harmonize it; and to this end they recommended several important amendments. . . . Owing to the absorbing interest taken in matters then pending in the legislature, the report of the revisers was left unacted upon until a late day in the session. Several of the amendments recommended by the revisers were lost in the legislature, and



many amendments were made, some of which were not sufficiently considered in their bearing upon the whole revision." The result of the labors of the revisers was the revised statutes of 1858. The printing of the volume was superintended by Mr. Lovell.

Except so far as amendments of the revisers' bill were made by the legislature, the revision of 1858 was based upon the laws in force before the legislature of that year met. Hence the laws of 1858, which were not revised but were compiled and arranged in the revision by Mr. Lovell, were not always in harmony with the revision. The result was uncertainty as to the controlling provisions. Whether any attempt was made to secure an adjournment of the legislature or the calling of an extra session in order to give time for the incorporation of the laws with and as part of the revision, is not known. The revisers' work stood the test of twenty years and was as free from defects as any other revision, except as indicated, and for such no responsibility attached to them. The volume was well printed; the classification of its contents into parts, titles, chapters, subdivisions of chapters and sections made them accessible. No references were made in it or in either of the previous revisions to the sources from whence the several sections were drawn, nor to decisions upon them.

Sketches of Judge Taylor and Mr. Lovell appear elsewhere. Mr. Todd was a member of the Rock county bar, and is living, at the time of writing this, in Beloit, though he has been an invalid for several years. He served as state senator in 1867 and 1868. His professional standing was always good. He was not partial to contested business, and avoided rather than sought it.

The inevitable result of the action of seventeen legislatures upon the revision of 1858 was to tear it into many fragments and to pile up a vast body of statutes which contained many inharmonious and irreconcilable provisions. The demand for a revision was indeed urgent when the legislature of 1875 authorized the justices of the supreme court to appoint three competent persons to collect and revise the general laws; they were also authorized to fix the compensation of the persons appointed and to make such allowances for clerk-hire as they deemed just

and reasonable. It was also provided that the revisers should enter upon their work as soon as practicable, and when the whole work was completed report it to the next succeeding legislature.

This was the first adequate provision made for a revision. The earlier revisers were limited, directly or indirectly, as to the time in which their task should be performed. The authority conferred upon the justices of the supreme court was so exercised as to produce the best results to the state; they fixed the compensation of the revisers at fifteen dollars per day each, and appointed David Taylor, William F. Vilas and J. P. C. Cottrill to prepare the revision. These gentlemen entered upon their labors in April, 1875, and prosecuted them until some time after the opening of the session of the legislature in 1878. In the meantime, the legislature became impatient for the result of the revisers' work, and inquiries were put by it, from time to time, as to the progress made. In 1877 the legislature, in order to secure the completion of the work within the next year, authorized the appointment of two additional persons to whom might be assigned portions of the work as projected by the revisers; pursuant to such authority Harlow S. Orton and J. H. Carpenter were appointed; the former prepared part four of the revision, relating to criminal law, the latter title twenty-nine, entitled "proceedings in county courts." The revisers were assisted from the beginning by A. C. Parkinson and during the last few months of their labors by R. C. Spooner. In their report, submitted with their bill, the method pursued by them and the objects aimed at are stated at length; the necessity of the time devoted to the work is vigorously defended, presumably because of legislative and public impatience on account of the delay in completing it.

In addition to reporting a bill the revisers submitted also a volume containing their formal report and notes made by them showing the sources from whence the several sections were drawn, and the changes of substance made therein, and, in some cases, briefly stating the reasons for recommending such alterations. This report proved to be very valuable and was in such general demand that it soon became impossible to obtain copies of it. The notes contained in it were reprinted

in Sanborn and Berryman's supplement to the revised statutes of 1878, and thereby made accessible to the profession. Another point of difference between the bill which became the revised of statutes of 1878 and previous revisions was that the former was sectionized consecutively; and yet another, that it contained references to the decisions of the supreme court affecting the sections or illustrating in some way provisions contained in them.

The inconvenience caused by the enactment of the revised statutes of 1858 without harmonizing the laws of 1858 therewith induced a different procedure in 1878; the revisers' bill was referred to a joint legislative committee consisting of L. W. Barden, T. R. Hudd and W. T. Price, on the part of the senate, and E. E. Bryant, Wm. E. Carter, E. C. McFettridge and H. J. Ball, on the part of the assembly; the committee was instructed to incorporate the general laws of 1878 as well as to examine the revisers' bill. In order that this might be done the legislature, having finished its other business, adjourned on March 21, with the understanding that when the committee on revision was prepared to report the governor would call it together in extra session. This was done and such session convened June 4. The committee reported one hundred and fifty-five amendments to the revisers' bill, nearly all of which were adopted; a few amendments offered by members on the floor were also adopted; these were not material. The extra session adjourned June 7.

As has been suggested, the conditions under which the revised statutes of 1878 was prepared were favorable for improved results as compared with the circumstances attending previous revisions. Such results were obtained, and to an extent sufficient to justify the language used by the joint legislative committee in their report: "Your committee cannot too highly commend the orderly arrangement and careful natural analysis of the revision. It is written in a terse, clear, perspicuous style, with remarkable condensation. The general plan of the work laid out by the revisers, the ability and painstaking fidelity with which it has been executed, command our approbation." Messrs. Vilas and Carpenter superintended the printing of the statutes, and were as-



sisted in that work by E. E. Bryant and R. M. Bashford. The total cost of the revised statutes of 1878 to the state, including the cost of the extra session of the legislature and the compensation voted the joint committee, was about \$71,700.

In 1895 the initiatory step for another revision of the statutes was taken by the enactment of a law authorizing Arthur L. Sanborn and John R. Berryman to prepare and publish the public general laws in force at the close of the session of the legislature of 1897, and by appointing them a committee, without compensation, to prepare and report to the legislature of 1897 bills for the correction of such errors and to harmonize such discrepancies in the statutes as they deemed advisable, together with such additional sections as they shall deem proper to carry out the general design and spirit of the statutes. Pursuant to such authority, they prepared a bill of nearly twelve hundred pages and submitted it to the legislature early in January, 1897; accompanying the bill were notes showing the sources whence the several sections were drawn, and explaining the substantial changes recommended. In their report they said, in explanation of the method adopted to attain the objects aimed at, that "it has been taken for granted that the very excellent revision of 1878 was acknowledged to be the basis upon which our work was to be performed; that no material change in the method of arrangement or the general plan of that work was contemplated, except in so far as it has been indicated by legislation since 1878. This acknowledgment of the merits of that revision is fully warranted by its excellencies. Constant use of it and comparison between it and the revisions of other states have so impressed us with the comprehensiveness of its merits as to feel very loath to make any attempt to disturb its parts or mar its symmetry. Hence our task has been wisely limited to the adaptation of the laws enacted since 1878 to such form as will permit them to become a part of the new statutes, which will be, in effect, the revision of 1878 brought down to 1898."

Substantially the same course was adopted by the legislature in respect to this bill as was pursued in 1878. The bill was referred to a joint committee of the legislature composed, on the part of the senate,

of Daniel E. Riordan, Julius E. Roehr and John M. Whitehead; on the part of the assembly, of William H. Flett, David F. Jones, William G. Wheeler and Leslie C. Harvey. On the 24th of April the legislature adjourned until the 17th of August, at which time the joint committee reported that it had examined the bill, incorporated therein the permanent general laws of 1897, and recommended various amendments to the bill. Objections were made to some of the amendments reported by the committee, and on the 18th of August the bill was recommitted to it; the next day and the day following, the bills having been considered by the committee on revision and the judiciary committee of each house, and a few amendments recommended, the legislature adopted these and, without making further amendments, passed the bill.

The distinguishing characteristic of the statutes of 1898 is their annotations. These have been the growth of years, and have been expanded and revised from the time of their original preparation in 1883 for publication in the supplement to the revised statutes of 1878. At the time of this writing the statutes of 1898 have not taken effect, hence there has been no opportunity to test the extent of their demerits. The report of the committee on the revision said of the work of the revisers: "We have found that the bill submitted by the revisers has been prepared with the greatest care and accuracy, and is worthy of the highest commendation. Where they have rewritten the law it has always been done in a very terse and clear style, with the most painstaking care, and with the result of considerably reducing the amount of matter. Their arrangement of the bill has been made in the most logical order, and the amendments proposed by them have, in the main, been found to be well calculated to carry out the purpose and to harmonize the provisions of the statutes."

#### GENERAL COMPILATIONS OF STATUTES.

The first compilation of the laws of Wisconsin was published in June, 1852, and was entitled "Supplement to the revised statutes of the state of Wisconsin, containing all the general laws and amendments enacted since the revision of the statutes (of 1849) up to the present date, being,

with the revised statutes, a complete transcript of all general laws now in force in this state." This volume of 164 pages was published at Kenosha by C. Latham Sholes. Nothing appears to show who prepared it for publication. Its publication does not appear to have been authorized by the legislature. The occasion for, and the nature of, the work are thus stated in the "advertisement:" "One or two considerations have induced the compilation and publication of this volume. A very general complaint is made, in the first place, that it is very difficult to obtain a copy of the annual enactments of the legislature; and, in the next place, such is the mass of local laws among which the general laws are scattered, and the imperfect character of the indexes and references, that it is a work of great labor, after copies are obtained, to discover and ascertain the exact character of our laws. All laws of the state, in any respect general in their character, and all amendments of the volume of the revised statutes have been carefully compiled and correctly published. Those of 1850 and '51 are published in the order in which they appear in the volume of session laws, and the year and page of each will be found correctly noted alongside the title. This order could not be followed with reference to those of '52 for the reason that the authorized annual volume of laws had not yet been published, and copies could not conveniently be procured from the state department in any prescribed order. This, however, is unimportant, as care has been taken in making the index to enable the searcher to find without difficulty any desired matter contained in the volume. To overcome also the difficulty of ascertaining readily what statutes (sections) of the revised volume have been changed, a list, in regular order, of every chapter and section altered since the revision will be found in the index, by reference to which will be seen, at a glance, all alterations."

The next in order of time, though of a different nature, was "an appendix to the revised statutes and general laws, from 1859 to 1867, inclusive." This was prepared by D. A. Reed, an attorney then resident at Sturgeon Bay, and purports to have been authorized, the title page containing the words "in accordance with a resolution of the general assembly." This pamphlet of twenty-eight pages contains references to



the acts amending the respective chapters and sections of the revised statutes of 1858; a list of general laws not amendatory of those statutes, and a list of laws amendatory of the laws of 1859-1867, both inclusive.

In 1871 there was published "the revised statutes of the state of Wisconsin, as altered and amended by subsequent legislation, together with the unrepealed statutes of a general nature passed from the time of the revision of 1858 to the close of the session of the legislature of 1871; arranged in the same manner as the statutes of 1858, with references showing the time of the enactment of each section, and also references to judicial decisions in relation to and explanatory of the statutes." These statutes were prepared by David Taylor, and were very generally used by the bench and bar previous to the publication of the revised statutes of 1878. Though not wholly free from errors, they were a great boon to the legal profession, and stand as a monument to the industry and learning of their compiler. They have a large practical value at this time because of the history of legislation in them. It is said in the preface that "in order to enable the reader to determine when the provisions of the revised statutes of 1858 were first enacted as the law of the state I have, either in a chapter note or by a reference under the section, referred to the law in place of which the law as found in the revisions of 1858 is the substitute, and in all cases where the laws are of such a nature that it may become important, in the determination of rights of property, to know the history of the legislation of the territory and state upon the subject, I have referred in a note to all the laws passed on that subject since the organization of the territory of Wisconsin."

This was the first statute of Wisconsin to give references to judicial decisions bearing upon the sections. Judge Taylor made notes of all Wisconsin cases then published affecting the statutes and notes of many cases in other states. One defect in the work is the absence of catch lines or side-notes to the several sections. These were omitted on the theory that the contents of each chapter, set out at the beginning of it, made them unnecessary; but this was a mistake.

Besides containing the statutes in force this compilation contained the rules of the supreme court, the circuit courts and rules in equity.

Instead of setting out the unrepealed acts passed in relation to the civil war, a list of them is given on pages 2006, 2007. This was the first time it became necessary to employ two volumes for the publication of the statutes of the state. Including the index, the work covered 2,217 pages. Though these statutes were not formally authorized, they were everywhere recognized, and were bought by the legislature for its use.

In 1883 A. L. Sanborn and J. R. Berryman produced their "Supplement to the revised statutes of the state of Wisconsin, 1878, containing the general laws from 1879 to 1883, with the revisers' notes to the statutes of 1878, and notes to cases construing and applying these and similar statutes by the supreme court of Wisconsin and the courts of other states." The chief value of this work lay in the notes of decisions contained in it and in the notes of the revisers of 1878, which had become exceedingly scarce. The annotations, owing to the rapid increase in the quantity of case-law since the publication of Taylor's Statutes, were much more extensive than in that work, and the statement of the points was much fuller, with, perhaps, a better classification of the notes. Though, at first, the members of the bar were a little cautious about taking hold of the work, its usefulness soon became apparent, and it had a satisfactory sale. The legislature several times recognized its value. It contained 1,015 pages.

The legislature of 1889 authorized A. L. Sanborn and John R. Berryman to prepare and publish or cause to be published the public general laws in force at the close of its session, together with notes of cases decided by the supreme court of this state which construe or apply such statutes, notes of such other cases and such other matter as they may deem proper. It was also provided, that such statutes should be evidence; and also, that no liability was assumed by the state on account of the law. The work so authorized was published in the autumn of 1889 in two volumes of 2,885 pages. It was entitled "Annotated statutes of Wisconsin, containing the general laws in force October 1, 1889, also the revisers' notes to the revised statutes of 1858 and 1878, notes of cases construing and applying the constitution and statutes, and the rules of the county and circuit courts and of the supreme court."

In these statutes the scheme of the supplement of 1883 is carried out to an enlarged extent; the annotations were greatly increased; the notes made by the revisers of 1858 were added to those made by the revisers of 1878, thus carrying the history of legislation back to 1849, and bringing it down to 1889. This work was well received and came into immediate and general use. The legislature provided for furnishing it to all courts of record, state, county, town, village and city officers. The confidence of the compilers that no unrepealed statute which ought to be in the work was omitted therefrom, was hardly justified, there being at least two such omissions, both relating to terms of circuit courts.

In the last three or four years the question has more than once been raised whether the necessity for such frequent revisions of the laws can be obviated. The answer depends upon the question whether the character of legislation can be materially improved. The revisers of the Wisconsin statutes of 1898 gave this question some consideration in their report to the legislature of 1897. Because what was there said was put forth in a document which is not generally accessible and which will soon be beyond the usual reach of nearly all quotation is made of it here. They said that the labor of preparing their bill had "been greatly increased because of the inartificial form in which many of the laws have been expressed, because many of them are enacted without regard to their relation to or effect upon the body of the law to which they relate or the legal system or policy of the state. The result is conflicting legislation, overlapping provisions and uncertainty as to the state of the law. This produces so many and important consequences that it is well worth while to consider whether a remedy can be found. Among the consequences directly attributable are largely increased litigation and the resulting public and private expense; the necessity for frequent revision or compilation of the statutes, and a lack of stability in the law. These results are unavoidable where legislative sessions are short, the amount of business large and the number of experienced legislators limited. We may perhaps be allowed to suggest that the remedy lies in providing for a small body of men to whom shall be entrusted the duty of passing



upon the form and validity of measures which have reached that stage of legislative action which is equivalent to an approval of them, and whose duty it shall be to put such measures in proper form, as well as to suggest the amendment of other provisions affected by them, regard being had to what is already enacted on the subject, to what the common law is, to the construction given previous legislation germane thereto, the mischief sought to be remedied and the efficiency of the remedy proposed. With the conclusion of such a body before it and the reasons therefor the legislature would be inestimably aided in the performance of its duties, needless and harmful changes in the statutes would be lessened, uncertainty as to the effect of laws would be diminished, the state and its citizens saved large expenditure of money, and other results attendant upon uncertainties and lack of stability in the law will be avoided. It is safe to say that the state will not long maintain a harmonious, systematic and well expressed body of statute law until some such course as is suggested is adopted.

The necessity of such a committee or body is much increased by the adoption of the amendment to the constitution prohibiting special legislation. All such special matters must now be covered by general laws. The result is that measures essentially local are pressed under the form of general laws, without regard to the effect they may have upon the state at large or upon the body of the general law. The judiciary committees are so overwhelmed with the great number of bills submitted to them, and their duties as legislators, that they have no time whatever to devote to the question of the general effect and harmony of proposed measures. It is beyond the scope of our duty to do more than suggest the matter, leaving the remedy to those upon whom is devolved the duty of enacting laws.

#### COMPILATIONS OF STATUTES ON SPECIAL SUBJECTS.

In this paragraph notice will not be taken of such compilations as are made periodically pursuant to authority vested in certain officers, as the various compilations of laws relating to the assessment of taxes, the conduct of elections, fish and game, public schools, etc.

In 1859 Walter S. Carter, of Milwaukee, prepared "the code of procedure of the state of Wisconsin, as passed by the legislature in 1856, and amended in 1857-58-59, with an appendix containing the rules of the supreme and circuit courts, the time of holding the terms of court in the various circuits, and of the United States district court." The occasion for this work lay in the fact that, by the revised statutes of 1858, the code of procedure was very materially amended, and the arrangement of it greatly altered. One valuable feature of the work was the references it contained to the corresponding provisions as found in the annotated codes of New York. The book was printed in Milwaukee, and contained 228 pages.

In 1858 the legislature directed the purchase from Elijah M. Haines of a sufficient number of copies of a work entitled "Laws of Wisconsin concerning the organization and government of towns, and the powers and duties of town officers and boards of supervisors, with numerous practical forms, by Elijah M. Haines, counselor at law," to supply each organized town in this state with six copies thereof, at a cost not to exceed fifty cents a copy, and also one thousand copies for distribution among new towns. The law referred to also provided that the governor should cause said laws to be translated into the German, Norwegian and Holland languages, and two thousand copies of the same to be printed in the German language, one thousand in the Norwegian and six hundred in the Holland. The writer does not know whether the translations were made or not, but inasmuch as only fifty dollars were appropriated for making them, it may be doubted. Mr. Haines was an Illinois lawyer and long afterward was speaker of the house of representatives of that state; he was also the author of some Illinois law books which had a large sale. His work appears to have been well done.

In 1869 the legislature provided for the purchase of a sufficient number of copies of a work entitled "Laws of Wisconsin concerning the organization and government of towns, and the powers and duties of town officers and boards of supervisors, with numerous practical forms, by J. C. Spooner and E. E. Bryant," to supply each town with seven copies, at a cost not to exceed sixty cents per copy, and also one thousand

copies for subsequent distribution. This work was published the same year. The names of the authors is a sufficient guarantee that it was admirably prepared.

The next work of this character was prepared and published in 1879, and had for its authors John C. Spooner and Hiram Hayes. The state paid \$2,200 for the manuscript and all the rights of the authors therein, and published the work.

In 1885 another compilation of "town laws" was made by George B. Carter, of the Grant county bar; and in 1897 Charles E. Estabrook, of the Milwaukee bar, was appointed to make a similar compilation, based on the statutes of 1898. At the time of writing this Mr. Estabrook's compilation has not been published.

In 1882 the legislature provided for a compilation of the original grant made by the United States government to the state of Wisconsin of swamp and overflowed lands, and of all the laws of the United States and of this state directly pertaining to this subject, together with all decisions of the department of the interior and messages of the governors of this state in relation thereto, and also such correspondence between this state and the government of the United States respecting the acceptance and selection of such lands as he (the secretary of state) shall deem necessary for a full explanation of the subject. That compilation was made and published in 1882. There is nothing in it to show who prepared it; the labor of doing it was considerable.

#### INDEXES TO LAWS.

In 1868 there was published a volume of 562 pages entitled "a digest of the laws of Wisconsin from the year 1858 to the year 1868, both years inclusive; to which is added an appendix, giving a list of all the laws and provisions of the constitution passed upon by the supreme court." This was prepared by E. A. Spencer, then of the Dane county bar, now deceased.

A few years later a more extended work of the same kind, entitled "a synoptical index to the general and private and local laws of Wisconsin from the organization of the territory to 1873 inclusive," was



published. This work was copyrighted by Roger C. Spooner, and was probably prepared by him. It contains 381 pages.

#### REPORTS OF THE SUPREME COURT.

T. P. Burnett was the first reporter of the supreme court. Some of the earliest cases reported by him were published as an appendix to the laws of the territory. In 1844 there was published a volume containing cases decided in 1842 and 1843, but not containing some of earlier date, published as stated. This volume consists of 237 pages, and, singularly enough, is without any other index than a table of cases. Mr. Burnett died November 5, 1846; and no reporter seems to have been appointed until after the organization of the state. He had prepared abstracts of the cases and briefs of all causes argued and decided up to the close of the July term, 1846, for the purpose of writing them over and putting them in proper form for publication at some future time. Some use was made of these by Mr. Pinney in preparing his reports.

Daniel A. Chandler, of Milwaukee, was appointed reporter of the supreme court at its first organization under the constitution. In June, 1850, the printing of the first volume of the reports was completed; it embraced the decisions of the first year under the state government. On account of errors and imperfections in the work, it seems that it was never published. Instead of publishing it a proposal was submitted to the judges to reprint that volume, which they agreed to, and volumes one and two were published in the latter part of 1850. Mr. Chandler reported four volumes, covering the cases in which opinions were written from the January term, 1849, to and including the June term, 1852. Some of the later cases are without a statement of the facts or syllabus. At the close of the June term, 1851, Mr. Chandler resigned his office.

In 1870 the legislature provided that "the supreme court reporter or such other person learned in the law as the judges of the supreme court may designate is hereby authorized and directed to cause to be published the decisions and opinions of the supreme court of the late territory of Wisconsin." S. U. Pinney, of Madison, was appointed by the court to perform that duty. He collected and edited the cases pre-

viously reported by Mr. Burnett and prepared for publication all the unreported cases decided by the supreme court of the territory, in which opinions were written. The first volume of his reports and the first seventy-four pages of his second volume cover the period from the July term, 1839, to the July term, 1847. Mr. Pinney also re-reported the cases in Chandler's reports and added a few not reported therein, thus covering the period from the July term, 1839, to the December term, 1852, when the supreme court was separately organized. Mr. Pinney's work was excellently done. In addition to discharging the duty imposed on him he added notes of value to some of the cases. His first volume is prefaced with a brief sketch of the leading events in the political and judicial history of the territory, and the rules of practice of the territorial supreme court. The third volume prepared by him contains, in an appendix, the rules of practice of the district courts of the territory, and all rules of practice adopted for the county, circuit and supreme courts since the organization of the state; with sketches of the judges of the first supreme court of the state.

The first reporter of the decisions of the separate supreme court was Judge Abram D. Smith, who reported volumes 1-11, inclusive. He was succeeded by Philip L. Spooner who prepared volumes 12-15, inclusive. On Mr. Spooner's resignation, O. M. Conover became reporter, and so remained until volume 58 was prepared. Of the volumes published while Mr. Conover was reporter, volume 16 was prepared by S. U. Pinney; volume 29 by James Simmons; volume 30 by James L. High; volume 37 by E. E. Bryant, and volumes 55-58, inclusive, by Frederick K. Conover. On the death of O. M. Conover, his son Frederick K., became reporter and so continues. He has reported volumes 59-95, inclusive, except that volumes 69, 79, 94 (in part), and 95 have been prepared for him by James Simmons.

In 1872 the legislature provided for a new edition of such of the supreme court reports as were out of print or so nearly so as to make the republication thereof, in the opinion of the court, desirable, such edition to be edited by such person as the court should select or approve. It was also provided that the volumes should be stereotyped, and that

the state should become the purchaser of four hundred and twenty copies of each volume. This act was the result of the Chicago fire, which had destroyed nearly all the Wisconsin reports on the market. Pursuant to the foregoing, volumes 1, 2, 4, 6-20, inclusive, were edited by William F. Vilas and Edwin E. Bryant, and volumes 3, 5, by Luther S. Dixon. Volumes 8, 9 were so much reduced in size as to permit their republication in a single volume. The notes added to the new edition by the editors greatly increased its value over the original edition. Volumes 21 and 22 were also reprinted, but without notes.

#### DIGESTS OF DECISIONS AND TABLES OF CASES.

The first Wisconsin digest was prepared by Wm. E. Sheffield, and published in 1865. It covered the cases from the first down to and including those in volume 14 of the reports.

In 1868 James Simmons' first digest appeared. It covered the cases in volume 20 of the reports and all earlier ones. In 1874 this was continued by a supplement covering volume 1, Pinney's reports, and volumes 21-31, Wisconsin. Besides digest matter proper, it contains the rules of the supreme court, rules of the circuit courts, "old rules," rules in equity, and a table of cases criticised. A second supplement followed in 1879, covering the cases in volumes 2 and 3, Pinney, and volumes 32-43, inclusive, Wisconsin. It also contained a table of cases criticised.

"Simmons' new digest of Wisconsin reports from the earliest period to the year 1885, containing a full and complete digest of volumes 44 to 61, inclusive, of the official reports of decisions of the Wisconsin supreme court, together with a complete condensed digest of all earlier volumes, with reference to the statutes and a brief index to volumes 62-65," was published in 1886. This also contains a table of cases criticised. A second volume, in continuation, was published in 1892, covering volumes 62-76 of the reports, and bringing the table of cases criticised down correspondingly.

Mr. Simmons has earned the gratitude of his professional brethren by the service rendered in the preparation of his digests. His labors



have been appreciated, and but for the limited market for such books, would have been fairly compensated, as compensation to writers of law books goes. The "new digest," mentioned above, was not as satisfactory as the original volumes because it was, so far as the cases covered by such volumes are concerned, a digest of the preceding digests. But notwithstanding this fact, Mr. Simmons' work has been unusually free from serious errors; his statements of propositions of law have been clear, and his classification has been in conformity with that of the best digests and the average sentiment of the profession.

In 1883 Charles E. Shepard and Thomas R. Shepard, of the Milwaukee bar, completed the preparation of a digest of the Wisconsin reports from the earliest reported cases to volume 57 of the reports. This was published in two volumes; volume 1 being the digest proper, and volume 2 containing a table of Wisconsin cases, showing their subsequent citation by the court; a table of reversed titles of such cases, a table of other than Wisconsin cases cited by the supreme court, and a table of statutes construed.

The authors of this digest performed a vast amount of work in its preparation. Their statements of propositions are concise and nearly always clear. They were not, however, content to follow the most approved methods of classification, but introduced several novel features. Principally because of the suggested deviation from the classification with which the profession was familiar their digest did not meet with the favor which it otherwise would have received. The Messrs. Shepard were close students and at their former residence in Fond du Lac, as well as while they were in Milwaukee, had a considerable practice. They left Wisconsin some years ago for the Pacific coast.

In 1883 the first Wisconsin index-digest made its appearance. Though its author was not a Wisconsin man mention of the work is necessary to be made for the sake of the completeness of this chapter. The author, Merritt Starr, of Chicago, produced a book which long remained in favor, especially with the younger lawyers. In 1889 a supplement to the foregoing, prepared by Geo. W. Burnell, judge of the third circuit, was published. It covered volumes 55-73, inclusive,

beginning where the other left off. In 1895 Judge Burnell prepared a second edition of his supplement, covering the reports from volume 55 to 87, inclusive. His work has met with a very favorable reception, and, with Mr. Starr's volume, is now in very general use.

In 1876 a volume of 318 pages entitled "Table of cases decided by the supreme court of the state of Wisconsin, and reported in" Burnett, Chandler, Pinney and Wisconsin reports, 38 volumes, by William W. Wight, of the Milwaukee bar, was published. While the work was all that the title indicates, it was much more, as the following extract from the preface shows: "The idea of the compiler has been to furnish the judicial history of every case found in the Wisconsin reports, from Burnett to the recently issued 38th volume. To this end an alphabetical list of these cases has been prepared, each one being succeeded by a reference to the page in subsequent volumes where that case has been commented upon or followed by the court, mentioned by the reporter or appealed to by the pleader." The work was well done and served the purpose for which it was prepared.

#### LOCAL TREATISES AND FORM BOOKS.

Edwin E. Bryant is the author of "a treatise on the civil and criminal jurisdiction of justices of the peace, and the powers and duties of constables in executing process in the state of Wisconsin." This was originally published in 1884 in a volume of 1019 pages. This work has been partially revised from time to time by adding references to the later laws and decisions. Besides covering the jurisdiction of justices, Mr. Bryant has written of the substantive law, given a summary of the law of evidence, and very many forms. His work has been very satisfactory, as is shown by the continued demand for it and the fact that it has held the field without a rival.

Mr. Bryant has also prepared a book of "forms in civil actions and proceedings in the courts of record of Wisconsin." It was prepared, says the preface, "to illustrate the lectures and instruction given in code practice in the college of law of the University of Wisconsin. It does not attempt to furnish a form for every class of cases that may arise in

practice. But as those in most common use are given, and as many of them, framed upon our statutes, can be found in no other collection of forms, the book will be of use to the practitioner in our courts of record as well as to the student." That this work has more than met the modest expectations of its author is apparent from the fact that by 1894 a third edition of it was published.

Mr. Bryant completed, in 1898, a treatise on code practice in civil actions under the Wisconsin code. This work is more especially designed for judges and lawyers.

Besides being the author of the works referred to under this subtitle Mr. Bryant has written two which are mentioned under another subdivision, and various notes of lectures for use in the college of law.

As early as 1853 William T. Butler, then judge of the county court of Jefferson county, prepared "a treatise on the probate jurisdiction and practice of the county courts of the state of Wisconsin with an appendix of forms framed in accordance with the revised statutes and subsequent session laws." The work contained 222 pages and was published in 1853. The older lawyers speak very favorably of its merits.

George Gale, formerly of the Walworth county bar and later judge of the sixth circuit, was probably the first man in Wisconsin to prepare a law book. As early as 1846 he caused to be published a Wisconsin form book, which was revised and republished in 1848, 1850 and 1856. The writer has access only to the edition of 1850, which is entitled "practical forms, with notes and references; adapted to the revised statutes of Wisconsin; being a convenient manual for men of business, attorneys, sheriffs, constables, town officers, and justices of the peace."

"Special statutory proceedings before courts and judges in Wisconsin, with forms, including habeas corpus, certiorari, and voluntary assignments." is the title of a work of 203 pages prepared by George Gary, and published in 1895.

Joseph F. McMullen, formerly of the Milwaukee bar, is the author of a form book which has passed through its fifth edition. The writer is not familiar with the first and second editions, and does not know the dates of their publication. The third edition, copyrighted in 1863, is



entitled "The new Wisconsin form book; a compendium of legal and practical forms, with principles of law, adapted to the statutes of Wisconsin, including a digest of amendments and judicial decisions, designed for the use of business men, county and town officers, the legal profession, and all classes in the community, to which are added complete official forms and instructions under the recent bounty and pension acts." The title page of the fourth edition, copyrighted in 1873, varies a little from that quoted. To the later impressions of it was added a "supplement to conform the work to the revision of 1878 and the laws of 1879," etc. The fifth edition, adapted to the revised statutes of 1878, was prepared by William W. Wight, of the Milwaukee bar, and published in 1884.

"Charles M. Scanlan, LL. B., of the Milwaukee bar," is the author of a work of 150 pages entitled "Law of hotels, boarding houses, and lodging houses, particularly adapted to the state of Wisconsin." This was published in 1890.

#### LEGAL BIOGRAPHY.

"The bench and bar of Wisconsin: History and biography, with portrait illustrations," is the title of a work prepared by Parker McCobb Reed, and published in 1882. It contains 542 pages.

H. A. Tenney and David Atwood prepared the "memorial record of the fathers of Wisconsin; containing sketches of the lives and careers of the members of the constitutional conventions of 1846 and 1847-48; with a history of early settlement in Wisconsin." This was published in 1880, and contains 400 pages. While not confined to biographical sketches of lawyers, it contains brief mention of all members of the profession who were members of either of those conventions.

#### LOCAL LAW JOURNALS.

The first local periodical devoted to the publication of legal intelligence was *The Wisconsin Legal News*. The first issue of the weekly was dated October 17, 1878. The first number of the daily probably appeared a few days earlier. The main purpose of the periodical was to

furnish the profession with copies of the opinions of the supreme court. So much of the space of each number as was necessary to present such opinions within a short time after they were filed was devoted to that purpose. The remaining space was occupied by miscellaneous matter of interest to lawyers, including selected cases from other courts. The *Weekly News* was continued from 1878 to 1883, and makes five quarto volumes. The last number bears date September 20, 1883. It was then, apparently, discontinued, and the *Daily News*, which had been published primarily for the advantage of the Milwaukee bar from the time of the establishment of the weekly, was continued from September 26, 1883, until July 3, 1884, on which date the last number appeared. Samuel Howard, of the Milwaukee bar, was the editor and the Wisconsin Legal News Company the publisher of both editions of the Legal News. The daily published the syllabi of the opinions of the supreme court the day after they were filed and this information was sent to the weekly subscribers in advance of the publication of the opinions.

On the 27th of April, 1895, there was published in Milwaukee volume 1, No. 1, "*Wisconsin Legal News*," a four-paged paper, containing a number of opinions of the supreme court, and miscellaneous matter relating to legal affairs. The name of Horace P. Henderson appeared as editor. The journal was to be published weekly. Three numbers were issued under that name, the two later ones containing six pages each. The issue for May 18 was changed to the "*Wisconsin Legal Reporter*," and two succeeding numbers followed it. These were enlarged to eight pages. The last issue was dated June 1, 1895.

Though "*The Law Library*," a monthly review of legal literature, was not designed to be local in its scope, it may be mentioned here because the single number of it which appeared was published in Milwaukee, Lewis Bohn being the publisher. The declared object of the paper was to furnish critical reviews of law books, bibliographical lists, and index to law periodicals. The first and only number (dated April 15, 1892) contained reviews of late books over the signatures of Geo. W. Warvelle, J. R. Berryman, H. Campbell Black, Prof. C. G. Tiedeman, and W. W. Thornton.

The "Wisconsin Bench and Bar" made its first appearance under date of April 14, 1898, the place of publication being Milton, Wis., and Mrs. Alric S. Blount being editor. The contents of the weekly numbers issued up to the time of writing this include contributed articles, clippings from exchanges, reviews of new books, selected opinions, abstracts of current Wisconsin cases, addresses on legal topics, etc.

#### TRIALS.

Wisconsin is not rich in the literature of trials. The public affairs of the state have not often been so conducted as to demand legislative investigation or prosecution for defalcation or other maladministration. In the main, the discharge of judicial functions has been committed to pure-minded men. But once has there been a trial before the senate as the high court of impeachment; that resulted in an acquittal. The impeachment proceedings against Levi Hubbell, judge of the second judicial circuit, furnished the state its most celebrated trial, and the report of that trial is the most valuable and sought after book of the kind in the state, and, perhaps, in the northwest. The eminence of the counsel engaged in that cause have given, in large part, that report its value. E. G. Ryan appeared on behalf of the managers and Jonathan E. Arnold and James H. Knowlton for the defendant. The managers, on the part of the assembly, were H. T. Sanders, G. W. Cate, J. Allen Barber, P. B. Simpson and E. Wheeler. The report, by T. C. Leland, published in 1853, contains the charges, evidence, arguments and other proceedings in full.

A case which excited the greatest popular interest and threatened most seriously to result in armed conflict was that known as Bashford vs. Barstow, which was heard and determined in the supreme court in 1856. The proceeding was in the nature of a quo warranto filed by the attorney general on the relation of Coles Bashford vs. Wm. A. Barstow, and involved the right to the office of governor. The eminence of counsel in that case,—Timothy O. Howe, E. G. Ryan, James H. Knowlton and Alexander W. Randall, for Bashford; Jonathan E. Arnold, Harlow S. Orton and Matt. H. Carpenter, for Barstow—the novelty of



the question involved and the partisan feelings existing, all gave to it very much of interest. The report of the proceedings—though made from newspaper accounts—is sufficiently full for practical purposes. The arguments of counsel were generally revised by themselves, and the whole work examined and revised by Judge Abram D. Smith. The publication was made pursuant to legislative action.

The trial of Sherman M. Booth for seduction is said to have been the result of the litigation which grew out of the attempt to enforce the fugitive slave law. It occurred in the Milwaukee circuit court before Judge McArthur. The case was prosecuted on behalf of the state by Dighton Corson, district attorney, and E. G. Ryan, and defended by H. L. Palmer and Matt. H. Carpenter. The reports of the trial, published in Milwaukee in 1859, contain the arguments and other proceedings in full.

The only other reported trial occurring in the state of which the writer has knowledge is that of David F. Mayberry for the murder of Andrew Alger. The trial took place in the Rock county circuit court before Judge Doolittle, July 10th and 11th, 1855, and contains the arguments of the attorneys—Geo. B. Ely, district attorney, and David Noggle for the state, and James M. Loop for the defense, and an account of the defendant's death by a mob.

#### GENERAL TREATISES AND DIGESTS.

Judge W. F. Bailey, of Eau Claire, while on the bench of the seventeenth circuit, wrote a treatise on "The Law of the Master's Liability for Injuries to Servant." This was published in 1894, and at once commanded the attention of that large portion of the legal profession interested in litigation of the character of which the work treats. It is a vigorously written book; the author's opinions are expressed with considerable force, and opinions which do not conform to his are unhesitatingly combated. The work soon obtained a large sale, and has been frequently cited in judicial opinions.

In 1897 the work referred to was supplemented by one entitled "The Law of Personal Injuries Relating to Master and Servant," which was

prepared to give the expressions of the courts on the subject "and properly arrange them." This work was published in two volumes. It has met a professional want, and been correspondingly successful.

John R. Berryman's first independent effort in the preparation of a law book resulted in the publication, in 1888, of "A Digest of the Law of Insurance; being an analysis of fire, marine, life and accident insurance cases adjudicated in the courts of the United States, England, Canada, Ireland and Scotland, including the cases relating to insurance in mutual benefit societies." This work was a continuation of a volume prepared about ten years before by O. B. Sansum.

In 1893 a second edition of Judge J. G. Sutherland's great work on the law of damages was published in three volumes. This was mainly prepared by Mr. Berryman, who has also written general articles for the American Law Review, The American Law Register and The Central Law Journal.

Edwin E. Bryant is a successful writer of law books. His efforts have mainly been confined to local books, as is indicated in another subdivision of this chapter. In addition, however, he has written "The Law of Pleading Under the Codes of Civil Procedure; with an introduction briefly explaining the common law and equity systems of pleading, and an analytical index, in which is given the code provisions as to pleading in each of the states which have adopted the reformed procedure." This work, the preface explains, is intended rather as introductory to than a substitute for, the more exhaustive treatises on the law of pleading. It was published in 1894, and has met with a favorable reception from students and instructors.

In 1895 there was published a work entitled "The Outlines of Law," which Mr. Bryant prepared. Its aim "is to give the student a glimpse of the general framework of our jurisprudence, so that he may perceive the relation of each (legal) subject to the whole, and refer each branch or topic of the law to its elementary principles and appropriate place in the system." The work was designed for students.

John B. Cassoday is the author of a work entitled "The Law of Wills: being a series of lectures on the subject of wills delivered before the col-

lege of law of the University of Wisconsin." This work was published in 1893. The preface says: "The contents of this book are taken from a series of lectures delivered to the senior classes of the college of law of the University of Wisconsin. With some hesitancy the publication is allowed, in deference to a seeming desire of students and alumni. The want of time to revise, extend and enlarge the work, so as to be of more service to the profession, is regretted." This work has continued to be the text book on the subject of which it treats in the local college of law. It contains a large amount of law, and considers the leading cases on the subject. The profession would have been pleased if the learned author had given his own views on many of the questions treated of. Judge Cassoday's learning in that branch of the law is extensive, and a presentation of it would have been highly valued by lawyers and jurists. But the work was prepared for students, and circumstances forbade the author from putting it in a form which would better have comported with his abilities and scholarship.

"The Road Rights and Liabilities of Wheelmen," is the title of a book written by George B. Clementson, of the Grant county bar, and published in 1895. Mr. Clementson, with undue modesty, hesitates to call his production a monograph, and says that it was not his object "to make a treatise or compilation for the use of lawyers, for at present they probably have but infrequent need of reference to an essay of the kind. Yet in case the necessity for research along the present line should arise, he believes the practicing attorney will find herein something for his brief." This book was a pioneer in its field, and in its preparation there was expended a very considerable amount of labor, and judgment and literary taste were abundantly exercised. Many books far more pretentious in character possess less merit. As the first attempt of a young man, though it be conceded that he has unusual power, the work is highly complimentary.

George Gary, of the Oshkosh bar and former judge of the Winnebago county court, was the first resident of Wisconsin to write a treatise upon a legal topic. His work, entitled "the law and practice in courts of probate under the statutes and decisions of the supreme courts of



Wisconsin and Minnesota," was published in 1879. The work also contained 152 pages of forms. Its reception by the legal profession was cordial, and its usefulness was more fully disclosed as time passed. In 1892 a second edition, revised by the author, was published. This was extended to include the statutes and decisions of Michigan, and, like every second edition ought to be, was an improvement on the first. The work is a monument to the learning and industry of Mr. Gary, especially in view of the adverse circumstances (caused by defective vision) under which it was prepared.

Burr W. Jones, of the Madison bar, is the author of a work which has given him an extended and enviable reputation, and which promises to increase his reputation in both these respects. It is entitled "The Law of Evidence in Civil Cases," and was published in three 12mo volumes in 1896. No work of recent times has been more favorably written of by the reviewers, American and English, than this.

William G. Myer, of Madison, has been connected with more law books than any other Wisconsin writer. Because he has not been admitted to the bar in this state a biographical sketch of him is given here in connection with the works of which he is the sole or co-author. Mr. Myer was born in Rush county, Indiana, in 1845. His parents went to Illinois when he was eleven years old, and settled on a farm in La Salle county, near Ottawa. He remained on the farm until he was twenty-one years old, attending the country school during the winter months, when work on the farm permitted. His education, beyond the merest rudiments, was obtained after he was of age, through his own unaided exertions.

He attended one term at Fowler Institute, Newark, Illinois; took the course at Bryant & Stratton's commercial college, at Chicago, and afterwards took a two years' course at the state normal university of Illinois. On leaving the normal university, in 1869, he became principal of the schools at Loda, Illinois, where he remained three years, during which time he began studying law, and was admitted to the bar in Missouri in 1872, opening an office in St. Louis, where he remained until the spring of 1881. Soon after settling in St. Louis he met the late W. J.

Gilbert, of the Gilbert Book Company, and was induced to engage in what proved to be his life work, viz., the writing of law books. His first venture was an index-digest of the Missouri reports, which was followed by indexes to the reports of Ohio, Iowa, Tennessee, and the reports of the supreme court of the United States. He also prepared an annotated constitution of Missouri, a supplemental volume to Wagner's Missouri statutes, a supplement to Whittelsey's Missouri practice, and assisted in the preparation and publication of Green's Pleading and Practice in Code States, to which work he also prepared a supplement, with forms, adapting it to the practice in Missouri.

Following this was a digest, in two volumes, of the Texas reports, which was begun by Judge Seymour D. Thompson, of St. Louis, and taken up and finished by Mr. Myer in 1881.

He came to Madison, Wisconsin, in the spring of 1881, partly for his health, and also to superintend the printing of his Texas Digest. In the spring of 1882 he began work on Myer's Federal Decisions, which occupied his time, and that of a large body of assistant editors, during the next seven years. This is a work of thirty large volumes, and comprises the decisions of all the federal courts, down to the date of publication. The decisions are redigested, and arranged according to the subject matter, instead of chronologically. The work presents the federal law in a form to render it easily accessible, and within the reach of lawyers of moderate means. While Mr. Myer was the responsible editor, and had the entire supervision of the work, he was assisted by a number of eminent law writers. Among these were Senator Daniel, of Virginia, James Schouler, Prof. W. G. Hammond, dean of the St. Louis law school, E. H. and S. C. Bennett, of the Boston law school, Leonard A. Jones, Benj. Vaughan Abbott, Judge B. R. Curtis, of the Boston law school, Percy D. Maddin, of Nashville, Tenn., Simon Greenleaf Croswell, Melville M. Bigelow, F. A. Farnham, W. D. Baldwin, and Woodbury Lowery, of Washington, D. C., C. F. Beach and E. W. Pattison, of St. Louis. His principal office assistants were Adelbert Hamilton, of Chicago, Theodore B. Wallace, of Missouri, and Charles R. Darling, of Boston.

In 1891 Mr. Myer published a work on vested rights—selected cases, with notes, on retrospective and arbitrary legislation affecting vested rights of property, under the federal and state constitutions. Recently, associated with the late Hon. John Sayles, of Abilene, Texas, he has prepared a digest, in three volumes, of the later Texas reports, a work in two volumes on practice in civil cases in courts of record in the state of Texas, and an annotated civil statutes, in two volumes, for the state of Texas. He has also rendered assistance in the preparation and publication of other works to which his name does not appear, such as the Texas reports, and other works for Texas and Missouri.

He was married, in Madison, in 1885, to Miss Eva B. King, and is living at present on his country place, consisting of eight acres, two miles east of the capitol, near the north shore of Lake Monona.

He is not a member of the bar of Wisconsin. Not having the time nor inclination to enter upon the practice of the law, he has never applied for admission to the bar of that state.

In politics Mr. Myer is a republican. He has never held a political office of any kind; has never sought or asked for an office, and office has never sought him.

James Simmons, of the Walworth county bar, is mentioned in connection with his Wisconsin digests and as the reporter of several volumes of the decisions of the courts of Wisconsin, in other subdivisions of this chapter. He has, however, produced other volumes of digests. Among them, volumes 4, 5 and 6 of Clinton & Wait's digest of New York reports. (See the preface of the 6th volume.) These were published in 1870, 1877 and 1882. Another work by the same author is a "digest of Moak's English reports, volumes 1 to 15, inclusive; with a list of cases reported, table of cases reversed, overruled and considered." This was published in 1878, and a continuation of it in 1886.

William W. Wight, of the Milwaukee bar, is the author of an interesting and learned monograph entitled "Lord Mansfield's Undecided Case," which treats of the disposition of the property of relatives, devisees and legatees perishing in the same calamity. This was published in 1893, and contains 27 pages.



## CHAPTER X.

### THE STATE BAR ASSOCIATION OF WISCONSIN.

BY EDWARD P. VILAS.

For some time prior to the meeting first mentioned below, there had been more or less desultory consideration of the propriety, and even advisability, of the organization of a state bar association, and upon the happening of a vacancy in the position of judge of the district court for the western district of this state, there offered an opportunity, of which advantage was taken and out of which arose the present organization.

On September 26th, 1877, a meeting of the bar of the western district was held at Madison, to consider the selection of a district judge to be recommended by the bar in place of Hon. James C. Hopkins, then recently deceased. At this meeting preliminary steps were also taken for the formation of a state bar association, and a committee was appointed who subsequently issued the call for the meeting at which the bar association was afterwards organized. The meeting of the 26th of September was adjourned to October 16th, at which adjourned meeting Hon. Romanzo Bunn was selected as the choice of the bar of the district, and his appointment by the President soon followed. The committee appointed at the September meeting was authorized to take such action as it should deem expedient to effect the organization of the bar association, and on December 8th, 1877, a call for the preliminary meeting of the bar of the state at large was published in the following form:

#### "STATE BAR MEETING.

"To the Members of the Bar in the State of Wisconsin:

"At a meeting of the members of the bar of the western district of Wisconsin, held on the 26th day of September last and attended by many lawyers from various parts of the district, it was resolved to initiate





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Br<sup>d</sup>. VTBar

Edward V. Kilgus

Neale & Co. Publishers





a movement for the formation of a state bar association. In pursuance of such resolution we, the undersigned, were appointed a committee and requested to call a meeting for the purpose of effecting such organization.

"We fully concur with our professional brethren who have made this request, in the belief that much advantage to the profession and to the state will result from such an association properly formed and maintained, and we take pleasure in assisting to form it. We, therefore, appoint the 9th day of January next, at twelve o'clock M. as the time, and the city of Madison as the place, of such meeting; and we cordially invite the lawyers of the state to attend and take part in the deliberations of the meeting and to coöperate in founding and upholding the proposed association.

"Madison, Wis., November 12, 1877.

"(Signed) E. G. RYAN,

Chairman.

"L. S. DIXON,

"H. B. JACKSON,

"DAVID TAYLOR,

"O. B. THOMAS,

"JOSEPH W. LOSEY,

"C. M. WEBB,

"J. C. SPOONER,

"WM. F. VILAS,

"Secretary,

"T. R. HUDD,

"J. M. BINGHAM,

"JOHN R. BENNETT,

"H. H. HAYDEN,

"Of the Committee."

Pursuant to this call, a meeting of the members of the bar was held in the old supreme court room in the capitol at Madison on the 9th of January, 1878, at which the present organization was perfected. The meeting was called to order by Chief Justice Edward G. Ryan as chairman of the committee, who delivered the following address:

Brethren of the Bar:

As chairman of the committee which called this meeting, I have the pleasant duty of welcoming you here. I have long desired to see an efficient association of the state bar; and I am happy to think that the auspicious time has at last come when one may be formed.

The uses of such an association are obvious. Without it, the bar cannot properly assert itself or exercise its due influence in matters of interest to it. Doubtless, in matters bearing on the interests of the profession, individual members of the bar exercise some influence. But such influence is necessarily fragmentary and sometimes discordant. The bar, as a body, can only have the influence which properly belongs to it, on professional subjects, through an organization by which it can speak with one voice.

The vast body of our law, called the common law, is the work of our profession; the wise and just rules which have been the legacies of generations of lawyers, through the centuries, to all common law people. And these constitute to-day, not only the great body of our municipal law, but the bulwarks of civil and religious liberty, of the rights of persons and of things, more extensive and secure than any written constitution. If it be true that the common law was somewhat due to the free spirit of the people amongst whom it arose, it is none the less true that it has educated all the peoples with whom it has prevailed, to higher, firmer and more independent manhood. It may be safe to say that no people, thoroughly educated in the rights of the common law, could be brought to tolerate an oppressive political system. Civilization from time to time outgrows some of the fixed rules of the common law; and it is the business of legislation to relax them and to adapt the common law to the existing condition of society. And the profession which is educated in the common law and has mastered it as a science, ought to have an influential voice in all legislation which modifies or repeals its rules.

But it is not outside only, but inside of itself, that the judgment and common voice of the bar should be heard and felt. We are all proud of our profession; proud of the multitudinous worthies who have made it illustrious in the past and who are showing forth its honor in the present. No profession or calling has given so many great names to American history as the bar. There is no state in the Union on which the names of its great lawyers have not shed luster. An American law

list from the beginning would embrace a large proportion of the names held in honorable memory by the American people. There is a passion for military glory amongst all nations—hero worship. And the glory of the soldier may be more dazzling than the glory of the statesman-lawyer, but it is less solid; for the truest glory of the soldier, here at least, is to preserve the work of the statesman. The path of the soldier, however patriotic or worthy the war, is destruction. The path of the statesman-lawyer is organization; and the path of every lawyer, worthy the name, is preservation. And in a high sense, true heroism may be in a tribunal as well as on the battlefield. Duty, fearlessly and faithfully performed, against all influences and difficulties, is the only true glory. Moral courage is a higher quality than physical.

He reads American history superficially who does not see the illustrious dead of our profession, battling in the vanguard for all true political and social amelioration; and he who looks upon society without seeing in the profession the sentinels of social order, sees through a glass darkly. In civilization, a community without a bar is worse off than an army encamped without sentinels; for the army may rally against surprise, but a community cannot peaceably defend its rights without the aid of the bar in the administration of justice. If the millennium be coming, it has not come. And the administration of justice is essential to the security of all rights, public and private; essential to all social order. There is the strength of the bar, powerful where an army would be powerless. In peaceful social order, the integrity of the state and every sacred personal right is in the keeping of our profession. The legislative power would pass laws and the executive draw the sword to enforce them, in vain, if there were no courts to administer them; and a court without a bar would be little better than an untrustworthy illusion—a disturbing phantom of justice. For not only must the bar educate competent judges, but it is the efficient and only fit censor of the judges promoted from it; a police power over the intelligence and justice of courts. In common law courts, the bar is as essential as the bench. A learned and independent bar is a condition of true civilization.

But the glory of the bar and the easy access which it gives to high place have drawn towards it men unfitted for it by nature or education. The bar has no exemption from fools or knaves. The foolish lawyer is perhaps the most dangerous of all fools; almost a knave, by assum-



ing duties of such grave import to the well-being of society, without adequate ability or training. Horace says that poets are born, not made; and perhaps orators are born also, though Horace thinks they are made; but though there may be geniuses who think that they are born lawyers, we know that a lawyer is born only of years of patient, steadfast, laborious study; and even then the safest knowledge of the wisest lawyer is the comprehension of how limited and uncertain his knowledge is. A knavish lawyer is certainly the most dangerous of all knaves, for it is to the profession that, in time of peril, all rights of person and property are committed. The bar is the trustee of everything which man holds sacred; and the opportunity to betray trust is fearfully easy. Indeed, it may be truly said that integrity of character is as essential to a lawyer as professional learning, for without innate love of truth and justice it is impossible truly to comprehend a profession essentially founded on truth and justice; and it is perhaps amongst the highest glories of the profession that instances of betrayed trust are so rare in its ranks.

But it must be admitted that there are unworthy members of the bar. The rule of admission is unfortunately lax. The doors are not ajar, but wide open. And there are those who have come in at them who should surely pass out of them. Doubtless all or most of you have had the same experience as myself. At the bar and on the bench I have sometimes seen—not often, but sometimes—conduct, even amongst able lawyers, calling loudly for scrutiny or censure; ignorance so great as to be almost guilt, and malpractice so audacious as to be almost folly. Such should not be permitted to abuse public confidence in our profession, or to cast a shadow upon its honor.

The power of courts to weed the profession of its unworthy members is limited and inadequate. Judges may be painfully obliged to surmise professional default, without judicial knowledge. All efficient steps to purge the bar must come from the bar itself. And this could scarcely be done—is almost never done—by individual effort. The aggregate bar must speak and act. The great body of the profession should enforce its ethics; censure what is worthy of censure, and move to disbar all who forfeit the honor to belong to it. This I take to be a main object of the association which you propose to form.

And the security of the profession should not stop at the bar; it should reach the bench. Positively corrupt judges are very rare, the

black swans of the profession. But a long life at the bar has led me to fear that semi-corrupt judges are not altogether so rare; men who insensibly look out of court room windows to see how the wind blows; men incapable of corrupt motive, but not above the influence of semi-conscious partiality; the dullards and cowards of the bench, who cannot and dare not look the truth in the very face, and declare it *ruat coelum*. The bench has no exemption from weakness or ignorance. And these are perhaps more dangerous in judicial office than corruption, because neither bar nor people are so intolerant of them. And yet it would be difficult to judge which way works the greater judicial wrong—the weak and ignorant judge, or the corrupt judge. These blights upon the administration of justice may not be so easily removed from the bench; but the voice of a united and unanimous bar would be potent to keep them from it.

And it is not only by direct action that a bar association, with these objects, would be felt for good. The existence of such a body, ready and potent to strike, would operate as a wholesome restraint; would strengthen weak conscience in others. We may at least hope that it will be so. We may at least hope that a few years of action and influence of such an association will go towards making universal the conviction that a lawyer is the most trustworthy of men in peril; true to his client when all else desert him; that a good lawyer is essentially a good man, an enlightened, high-minded, honorable gentleman.

For obvious reasons, gentlemen, I cannot share your deliberations or your work. If I should survive my term of office, I hope to find a place in your association. Until then, my work for the honor of the profession must be essentially distinct from yours. And I beg you now to choose your presiding officer, that I may retire.

Notwithstanding the very obvious meaning of the last paragraph of the address, the chief justice was at once nominated as president of the meeting, but he promptly declined to take further part in the organization of the association, for the reason that the court over which he presided might be called upon to act judicially upon matters brought before it by the association. Thereupon Moses M. Strong was nominated and unanimously elected president of the meeting, and Edwin E. Bryant was elected secretary. William F. Vilas, secretary of the com-

mittee appointed to call the meeting, stated the circumstances which led to the call—the action of the western district bar meeting and of the committee, and on behalf of the latter submitted and read the constitution which was recommended by the committee as the basis of organization. The constitution was thereupon considered by sections and adopted, and still stands as the constitution of the organization without change, except in the matter of the place of holding the annual meeting, and a minor amendment relative to the filling of vacancies in office. Upon the adoption of the constitution, officers of the state bar association were elected as follows:

President, Moses M. Strong of Mineral Point.

Vice-presidents: First circuit, T. D. Weeks of Whitewater.

Second circuit, A. R. R. Butler of Milwaukee.

Third circuit, L. F. Frisby of West Bend.

Fourth circuit, David Taylor of Fond du Lac.

Fifth circuit, J. Allen Barber of Lancaster.

Sixth circuit, J. M. Morrow of Sparta.

Seventh circuit, M. A. Hurley of Wausau.

Eighth circuit, S. H. Clough of Superior.

Ninth circuit, A. G. Cook of Columbus.

Tenth circuit, W. H. Norris, Jr. of Green Bay.

Eleventh circuit, J. M. Bingham of Chippewa Falls.

Twelfth circuit, no election.

Thirteenth circuit, H. H. Hayden of Eau Claire.

Secretary, Edwin E. Bryant of Madison.

Treasurer, J. H. Carpenter of Madison.

Executive Committee for three years: John W. Cary of Milwaukee,

W. F. Vilas of Madison,

A. A. Jackson of Janesville;

For two years: F. C. Winkler of Milwaukee,

H. B. Jackson of Oshkosh,

S. U. Pinney of Madison;

For one year: J. W. Losey of La Crosse,

J. V. Quarles of Kenosha,

S. D. Hastings, Jr. of Green Bay.



Mr. Strong upon assuming the chair as president of the association delivered the following address:

“Brethren of the Bar:

“I thank you for the high compliment implied by my election to the position of first president of the state bar association. I do not presume to attribute the compliment so much to personal considerations as to the fact that it is my fortune to have outlived in active practice all the other members of our profession who were in practice when I first entered upon it in Wisconsin in 1836; a distinction which advancing years admonish me I cannot long expect to retain.

“Permit me to congratulate you, and the other members of the bar of the state whose names will soon be enrolled with ours, upon the harmonious formation of this association under such favorable auspices.

“The chief justice, in his interesting address this day to the meeting, whose action has resulted in the formation of this association, has so aptly set forth its advantages and utility, that you may well congratulate yourselves upon the success of your efforts, if it shall so result that your work will be calculated to attain such advantages and usefulness. So far your efforts have been limited to the formation of a constitution, which is to form the fundamental law of your organization. This for the present is enough. This organic law provides all the machinery essential to the attainment of the objects of the association.

“A most important part of this machinery is found in the provision for the four standing committees. The committee on amendment of laws will, if it faithfully perform its duties, find much work demanding its attention, not the least important part of which will be the endeavor to obtain such a modification of the laws relative to the admission of attorneys to practice, as will be calculated, by denying the high privilege of practicing our profession to persons unfit to enjoy it, either from want of learning, general or professional, or want of moral character, to elevate the character of the profession to that high plane which has made its history at once the pride and boast of all who are worthy to share its honors.

“The older of you can remember when nothing less than seven years’ study, four of which may have been devoted to preparatory studies in college or other high literary institutions, was requisite to entitle an applicant to even an examination for admission to the bar. Now,

how changed! There are practically no prerequisites of either knowledge of law or knowledge of anything else as conditions of admission to the bar.

"In their endeavors to obtain such modification of the laws as have been shadowed forth relative to admission to the bar, the committee on amendment of laws can and should receive essential aid from the standing committee on legal education, whose duties as defined by the constitution pertain to this subject. There are also other and obvious ways in which this committee can materially aid in the important work of elevating the tone of the profession.

"It is, however, through the agency of the judicial committee that present active steps must be taken to reform the profession, by depriving of its privileges shysters and other unworthy members. It is the province of this committee to hear and consider all complaints against any member of the profession, whether members of this association or not, and to adopt such measures as the committee may deem advisable to effect their removal from the bar.

"It is supposed that none who are not worthy members of the profession will be and remain members of this association. From the nature of the case, no discrimination can be made in original membership; and if it shall be found that a 'black swan' has had the audacity to enroll his name as a member of the association, it can only be purged of his presence by expulsion on vote of two-thirds of its members. After sixty days, however, no one can become a member of the association except upon a vote of three-fourths of its members; and it is believed that expulsion from the association, or a refusal of admission to it, will have such moral effect that the subject of it will be powerless to contaminate the profession or to inflict much evil upon the community by virtue of being nominally a member of the bar.

"Another important characteristic of our association will be its social element. The fact alone that several hundred members of our common profession, in which we all take so much interest and pride, meet together annually and exchange greetings and indulge in common sources of joy and pleasure, and speak of our common or individual experiences, our successes or our failures, or as may be, and too often will be, to mingle our griefs over the death of some of our brethren, cannot fail to create and annually cement a bond of sympathy and friendship which will be as lasting as time, and as holy as love.

“Nor will it be an unfitting concomitant of these reunions that their interest be augmented by such social festivities as shall be appropriate to such occasions.

“Again thanking you for your kind partiality, I await the further pleasure of the association.”

The first regular meeting of the association succeeding the preliminary meeting, was an adjourned meeting held on the 20th of February, 1878, at the United States court rooms at Madison. The other meetings of the association since that time have been as follows: February 17th, 1885, and February 16th, 1886, at Madison; June 15th, 1886, at Milwaukee; June 20th, 1893, and an adjourned meeting on the 30th of August in the same year, at Milwaukee; a meeting at Milwaukee June 26th and 27th, 1895, and the last meeting February 21st and 22d, 1898, at Madison.

The constitution recites that “the object of the association is to maintain the honor and dignity, and to increase the usefulness and influence, of the profession of the law;” and although the meetings of the association have been somewhat irregular and spasmodic, and the interest taken in the association apparently somewhat phlegmatic on the part of a large portion of the bar, nevertheless the association has been productive of very considerable good and has aided in the accomplishment of several of the objects for which it was organized.

At the preliminary meeting in January, 1878, Charles R. Gill offered the following resolution: “Resolved, That the several circuit judges of this state be respectfully requested to strictly observe the laws of the state with reference to the admission of members of the bar;” and although the resolution was, after a sharp debate, rejected, nevertheless it attracted attention to the subject, was the occasion of very animated discussion and gave rise in the association, both by reason of the discussion had at that time and at subsequent meetings, to a movement which has affected the entire bar and which the writer believes was quite potential in effecting the change which was later made in the method and requirements of admission to the bar. The rejection of the resolution at this meeting was due to a feeling amongst a majority



of the members that it reflected upon the circuit judges and savored too much of a supererogatory request to them to observe the laws of the state and a suggestion that they were indulging in a practical disregard of them. At the next meeting, however, in February of the same year, Mr. Gill again offered his resolution. To meet the objections which had been brought against it and which were again urged, L. F. Frisby offered as a substitute the resolution which was finally adopted, in the following terms: "Resolved, That the association is in favor of the strict enforcement of the laws of this state regarding the admission of attorneys." Although the state bar association held no meeting from that time until February, 1885, and although as an association it cannot be said to have afterwards taken any effective part in the movement which culminated in the appointment of a board of examiners for admission to practice at the bar, nevertheless the resolutions in question, and the discussion which was had at the two meetings at which these resolutions were presented, doubtless had a very strong influence in urging the adoption of some method by means of which candidates for admission to the bar would be required to possess a higher degree of qualification than had theretofore been obligatory. But whatever may have been the other influences at work, chapter 63 of the laws of this state for 1885 first provided for a board of examiners for admission to the bar. It was provided that the board should consist of five competent attorneys, residents of this state, to be appointed by the supreme court, the board to hold meetings at the capitol once or oftener in each year, and at such other times as the supreme court should direct, for the purpose of examining all applicants for admission to the bar, and to issue to successful candidates a certificate of qualification for admission.

It is further provided that no person shall be admitted or licensed to practice as an attorney of any court of record except, first, graduates of the law department of the University of Wisconsin shall be admitted to the bar of all courts, upon production of the diploma issued by the board of regents; second, all persons who shall have been admitted to practice in the supreme court of any other state or territory and who shall be residents of this state, may be admitted upon production of their

certificates of admission to practice in such courts of such other state or territory; third, that every other person of full age, resident of the state, and of good moral character, may be admitted to practice as an attorney in all courts of record, except the supreme court, by an order of a judge of the circuit court made in open court, but the applicant shall first produce the certificate from the board of examiners appointed by the supreme court that he possesses sufficient learning in the law, and ability to enable him to properly practice as an attorney. So far as relates to the admission of applicants living in this state not previously admitted to practice in other states, the act of 1885 remains unchanged to the present time, except that by chapter 310 of the laws of 1891 the board of examiners is required to establish a uniform standard of attainment which must be reached by each applicant before he shall receive a certificate; and some provision is also made with respect to the examination papers and their disposition.

Chapter 174 of the laws of 1897 is another effort to raise the general standard required for admission, by providing that as to attorneys of other states applying for admission here, they shall give satisfactory proof to the court to which they make their application of their having been engaged in actual practice in such other state or territory at least two years prior to application for admission to courts of record in this state; and further providing that any graduate of a law school of any other state or territory, which shall be accredited by the board of examiners as a school of equal standing to the college of law of our own university, may be admitted to practice in the courts of this state on production of his certificate of graduation from such school.

It is not intended to be assumed in this article that the state bar association has been the author of these different provisions; but only that the subject matter has been under discussion since the early meetings of the association. At different meetings various resolutions have been offered, a very considerable discussion of the subject has been had both at meetings and in committee, and various recommendations have been made, from time to time; and that with so much discussion

amongst members of the association it is but natural that some fruit must have been garnered from the seed thus planted.

At the meeting held in June, 1886, the committee on legal education submitted a report embodying the results up to that time of the act of 1885; an amendment somewhat similar to chapter 174 of the laws of 1897 was at the same meeting proposed, and general discussion of the question evinced great interest in the subject, and it is to be regretted that the space given to this article will not permit the entire report and discussion to be set out at length. The result of it all, however, was that the report of the committee on legal education, with all pending propositions in relation thereto, was recommitted to that committee, with instructions to consult with the faculty of the law department of the state university and the board of examiners of applicants for admission to the bar, and that they jointly recommend to the legislature at its next annual session such amendments, if any, of the laws in relation to admission to the bar as they might think proper. And it was also resolved that it was the sense of the association that the period for legal education should be extended.

It was recognized throughout the entire discussion at each meeting that the extension of the course in the law school of the university and the standard of attainments and length of study required by the board of examiners should largely go hand in hand; for otherwise, the one method of admission would draw away from the other. Thus, the standard of attainment before the board of examiners had to be cautiously and gradually extended until the law school course could be so modified and extended as to embrace similar requirements.

The course in the law school has now been extended to three years. The standard of attainments to entitle a graduate to receive his diploma has been materially raised, and running in parallel lines, the standard required by the board of examiners has also been very considerably raised, so as to keep pace as near as practicable with the requirements of the law school.

The writer of this article believes that the act of 1885 is the first of the kind passed in any of the states, and that Wisconsin has the



distinction of being the first state to adopt this method. It has been at various times claimed that one or another state is the pioneer in this movement, and the claim has been made for New York, and possibly others; but, upon reference to the different acts, the writer has been unable to find one that dates back as far as our act of 1885.

This method of examination for admission to the bar has not only the advantage of raising the standard of attainments and of relieving the courts from the necessity of examinations, which had become altogether too lax, but has made it possible for the law department of the university to extend its course and raise its standards until it requires now a standard of attainment and scope of study well calculated to thoroughly equip a student of the law for active practice.

At the general election held in November, 1877, an amendment to the constitution was adopted by the people providing for the election of two additional judges of the supreme court, and at the meeting held in February, 1878, an attempt was made by the state bar association to recommend two candidates for election to these places. The legislature, however, was in session, and the parties in that body, aided by delay occasioned by a somewhat acrimonious debate in the bar association, adroitly forestalled the action of the association, and on the evening before the day on which the association expected to make its nominations Harlow S. Orton and David Taylor were nominated by caucuses of the members of the legislature, and the bar association adjourned without action.

After the two meetings held in 1878 the association laid dormant until February, 1885. At this meeting there was a large attendance, and an attempt was made to recommend the nomination of a candidate for office of judge of the supreme court in the place of Hon. David Taylor, whose term would expire on the first Monday in January, 1886. At this meeting a resolution was adopted recommending Levi M. Vilas of Eau Claire as a candidate for associate justice of the supreme court, but shortly afterwards Mr. Vilas declined the candidacy. But little other business, and that of a routine character, was transacted

at this meeting, except the election of officers and the appointment of standing committees for the year.

At the next meeting, in February, 1886, a resolution was introduced earnestly requesting our senators and representatives in Congress to procure, if possible, the passage of an act creating an additional circuit, composed of the states of Wisconsin, Minnesota and Nebraska, and the appointment of the ablest lawyer in the circuit to fill the place of judge thereof, for reasons recited in the preamble to the resolution, to the effect that the state of Illinois required so much of the services of the circuit judges that Wisconsin was especially neglected and practically denied its right of review in actions involving less than \$5,000.

The resolution drew out considerable discussion, and was finally referred to a special committee for further action.

At the next meeting, in June of the same year, the committee reported, recommending that the resolution be amended by substituting a request that our senators and members in Congress take action immediately, looking towards the passage of some act which to them seems best suited to secure a speedy examination of all pending cases in the federal courts throughout the United States, and to expedite all litigation therein. This resolution was adopted, and during the discussion in connection with it, various schemes were put forward looking to the relief desired, and amongst them the project of having an intermediate court of appeals which, since that time, has been established by act of Congress.

The next meeting of the association was held at the United States court room in the city of Milwaukee on the 20th of June, 1893. Only routine business was transacted, and the association adjourned to August 30th, of the same year, for the purpose of participating in the reception and entertainment of the American bar association, which that year held its annual meeting in Milwaukee.

On August 30th the association was again in session, at which time only routine business was transacted. It was at this meeting, however, that Mr. Strong resigned as president, and Judge Seaman was elected his successor.

The next meeting of the association was held in Milwaukee on the 26th and 27th of June, 1895. It was at this meeting that Judge Carpenter of Madison resigned as treasurer, and Mr. Van Valkenburgh was elected his successor.

Various reports from committees were received, and interesting papers were read by Alexander Meggett of Eau Claire, George G. Greene of Green Bay, and a paper upon legal education by Gen. E. E. Bryant. This meeting was perhaps more satisfactory in point of attendance and interchange of opinions in discussion of the various subjects of interest to the members present than any meeting of the association which has ever been held.

A feature of nearly all of the meetings of the association has been a dinner on the evening of the last day of the meeting, at which justices of the supreme court and many judges of other courts have been present as guests.

The meetings have not been attended, however, at any time with any marked degree of enthusiasm, except on the part of a few. Members of the bar do not seem to appreciate the real good which these meetings do, and the still greater good which they might accomplish if members of the bar would more generally attend. But the opportunities exist, notwithstanding the apathy with which they are regarded, and it is the hope of the present officers of the association to awaken a greater interest in it and in its objects, and increase not alone its membership, but the attendance at the meetings, the interest in the objects sought to be gained, and more hearty individual work in carrying out what the association as a body may recommend, but is incapable of executing as an association.

A perusal of the address delivered by Chief Justice Ryan at the first meeting shows that he considered a bar association as a means of the utmost importance to purify the bar of its unworthy and recalcitrant members. Provision is made in the constitution and by-laws for disciplining such members of the bar by bringing them before the bar of the proper court upon suitable representation made by the association. There was in the early days of the association a strong feeling



that the bar association would take action looking to the proper punishment of those members of the bar in various parts of the state who should prove false to their trust, and to their oaths as attorneys. The association, however, has never yet acted upon a single case, and but very few have ever been reported to the association for action. There seems to be a profound reluctance on the part of members of the bar to take action looking towards disbarment of unworthy members, even though it reaches a point at which further tolerance would seem almost paramount to complicity; and even then, a bar association rarely takes the initiative steps. Chief Justice Ryan very aptly said that unworthy members of the bar could not well be proceeded against by the individual, and that such action should come from the united bar as a body, and that if it were understood that such a body existed, ready and willing to strike, and strike hard, when action seems to be demanded, it would exercise a controlling influence over those members of the bar who might otherwise be led to the commission of unworthy acts.

The bar association of this state has not thus far taken any action which would justify any apprehension from it by those disposed to commit breaches of professional honor or integrity. One of the widest and most useful fields which it might occupy is thus left wholly and entirely unoccupied.

In the foregoing pages it has been sought to give only an outline of the more important transactions of the various meetings of the association. It is intended rather to show what the possibilities of such an association are rather than to detail the comparatively little that has been done; but there has seemed of late an awakening of interest in the association, its business purposes and aims, and it is hoped and expected that the association's influence will be greatly enhanced within the next few years.

The last meeting of the association was held at Madison on the 21st and 22d of February, 1898. Up to that time the association had had but two presidents: Mr. Strong holding the office until the adjourned annual meeting on the 30th of August, 1893, when he tendered his resignation, and Hon. W. H. Seaman, United States district

judge of the eastern district of Wisconsin was elected president in his place.

Gen. E. E. Bryant continued to act as secretary until the annual meeting in February, 1885, when he retired and Edward P. Vilas was elected to the office.

Hon. J. H. Carpenter was the first treasurer and continued to act as such until the annual meeting held at Milwaukee on the 26th and 27th of June, 1895, when he resigned and F. B. Van Valkenburgh, of Milwaukee, was elected as treasurer.

At the annual meeting on February 22d, 1898, Hon. John B. Casoday, chief justice of the supreme court, was elected president; Cornelius I. Haring of Milwaukee was elected secretary; Burr W. Jones of Madison was elected treasurer.

The executive committee is composed as follows:

For one year: W. P. Bartlett, Eau Claire; Myron Reed, West Superior; H. W. Lander, Beaver Dam.

For two years: Geo. G. Greene, Green Bay; C. F. Osborn, Darlington; Elihu Colman, Fond du Lac.

For three years: George H. Noyes, Milwaukee; A. A. Jackson, Janesville; A. L. Sanborn, Madison.

As delegates to the American bar association from this state, there were appointed William F. Vilas, John C. Spooner and Joseph V. Quarles.

The attendance at the last meeting of the association was not very satisfactory—comparatively little interest being manifested by its members, notwithstanding the fact that an exceedingly interesting program had been arranged. A paper was read by Carl C. Pope of Superior upon the subject of "Equity in Criminal Law;" one by Charles N. Gregory of Madison on "Government by Injunction;" and one by Hon. Peter S. Grosscup, United States district judge of the northern district of Illinois, on "A Lawyer's Duty toward the Promotion of Popular Self-Mastery." A dinner was held in the evening at the Park hotel and toasts given and responded to. Except in point of attendance, the meeting was one of the best which the association has ever held, but

in point of attendance it was exceedingly disappointing and discouraging. Nevertheless, renewed effort will be made to awaken interest and to try to have the association take that position in the state which it ought to secure and maintain.

The president of the association was requested to deliver at the meeting in 1895 an address on the subject of what the association can and ought to accomplish, and the methods by which such objects can be best attained, and it is perhaps the most fitting close which can be given to this article to reproduce in full his remarks made upon that occasion, which were as follows:

Gentlemen of the State Bar Association of Wisconsin:

The meetings of the association have not been held with the regularity intended by its constitution, nor have they been so frequent as to furnish much by way of precedent for an address by the president. But this meeting has been called, at a favorable season, with the hope that it may bring a revival of interest and an increase of usefulness, and your executive committee have given their attention to a program in that view. They have also requested that the president open the proceedings with an address "on the subject of what the association can and ought to accomplish, and the methods by which such objects can be best attained." The field of inquiry which this proposal would open is so wide of range and embraces problems of such difficulty that, with the limited time at my disposal, I can offer but a few crude suggestions, trusting they may find some value in awakening your interest in this cause and may possibly lead to consideration of some plans for its advancement.

The object of the association is clearly and comprehensively expressed in section 2 of the constitution: "To maintain the honor and dignity, and to increase the usefulness of the profession of law."

It goes without saying that any attainment of these declared objects would be of inestimable benefit to the profession; that there are great possibilities in this direction through organized effort and example, and that all promotion of the honor and influence of the profession makes for the advantage of the individual members. But it is in the view of the influence which the lawyer possesses in his community and his relations to society at large that these purposes have their great-



est importance. The profession of the law carries with it opportunities for advancing the material welfare of the people beyond those of any other profession or class, and it is consequently charged with higher obligations. These opportunities are not due to any intellectual or moral superiority or to qualities of mind which are not equally possessed by others, but they come from the associations of the lawyer and the nature of his work; from the relation of confidence which exists between him and his clients; his advice being sought and given in their affairs, the tendency is to obtain their reliance upon his judgment generally, and thus by example others are inclined to defer to his counsels. He is constantly acquiring intimate knowledge of the various affairs and causes which affect the interests of the community, and becomes conversant with human nature under the closest tests. It is not open to any other occupation to pave the way to such varied and direct information or to such extended public confidence. Most men who take active part in life have occasion, at one time or another, to consult a lawyer, and the business man has usually a regular legal adviser. From his circle of clients there goes out to the lawyer a recognition, which gives him a certain prestige, leading to prominence in the public regard, and his suggestions and counsel obtain importance; he is further favored by the familiarity with public concerns which accrues from his professional work, and by adaptability and readiness for their presentation which come from his practice. These advantages are common to the profession, differing only in degree according to the reputation, and each member is in position to take part in moulding and leading public sentiment in his locality. Herein his great responsibility arises. Possessed of the power and the opportunity, it is his duty to exercise it when the occasion demands, and give that sentiment right direction for the general good. This obligation is legal, as well as moral, assumed with the grant to him of privilege to practice the profession, and he is bound to its observance by the oath which was taken upon his admission.

The memorable address of President Cooley before the American Bar association in 1894 speaks of this duty, having special reference to the public disorders of that year, in a view which should have the earnest consideration of every member of the profession. I quote a passage which perfectly expresses the thought suggested here: "Every lawyer, when he is given license to practice, takes solemn oath to support the constitution of the United States and of the state of which he is

a citizen. He also undertakes to observe all due fidelity to the courts in which he may practice. His license is a special and valuable privilege which makes him a prominent character in the community in which he lives, and leads to his being made the trusted counselor of persons in other occupations as well as of the public authorities. His advice, thoughtfully given, tends to prevent controversies and dissensions in the community, having their origin in different views of legal rights, and he may be influential in calming passionate excitements and keeping the wheels of industry moving peacefully and prosperously where otherwise mischievous counsels might prevail. The power to be thus useful imposes upon him duties and obligations special in their nature and quite beyond those which rest upon persons in other employments." Further on Judge Cooley points out that a lawyer may more effectually support the constitution and laws "by assisting to build up a public sentiment that shall constitute an impregnable bulwark against those who, either through malice or ignorance, or with revolutionary purpose, assail them, than it would be possible for him to do by personal service as a soldier or by physical assistance in the suppression of rebellion or of domestic disorder."

This portrayal of the place of a lawyer in the community is not overdrawn, and the words of that great jurist may well awaken a spirit of pride in the profession and of emulation in extending its usefulness. The statistics which are often cited, showing the proportion of lawyers in the work of constitution-making, of legislation and in great popular movements, are neither so interesting nor so convincing as these suggestions which bring to the mind of each member his experience in home affairs, and in which he can recognize a primary and important sphere of usefulness, hand in hand with his professional work. To be at the front in creating and fostering healthy sentiment and in defeating harmful movements it is not necessary to become a politician or to engage in general politics, although he may incur greater temptations to that line which so often proves the bane of good professional work; his avoidance would rather tend to strengthen his influence in non-partisan matters. This work does not demand the sacrifice of legitimate retainers, but it does require a constant fidelity to the constitution and to the courts as paramount obligations. Although great ability, learning or eloquence may be valuable aids, they are not essential. There is room and work for all, and the duty rests with each to perform his part

in advancing the public good. His part must be directed by honest purpose and conscientious regard for his professional oath.

To retain the profession in this standing of influence and trust no effort must be slighted which tends to strengthen and improve it. The fact that it has so well preserved its honor and dignity, while its membership increases with great rapidity from year to year, is matter for congratulation and pride, but we must not close our eyes to the dangers which threaten from this influx, in the tendency to strife for retainers; to servility and pandering to popular clamor; to giving support to causes without merit, for profit or notoriety, and in disregard of the oath of fidelity to the courts. An impression is current that the profession is receiving in large and increasing numbers an inferior and demoralizing class of seekers and practitioners who are lowering its quality, but I am well satisfied that they are not numerous with us; that the Uriah Heeps are rare exceptions, and although they may infest the ranks occasionally their stay is short-lived and mainly in the great cities. With us the young men who are struggling into place come with good professional tone, or they rapidly assimilate that which they find for their environment, and the high professional standard seems to hold unimpaired. The purposes of this association are well defined to aid in upholding that standard. Against the lowering tendencies which must creep in it can exercise unity of watchfulness, counsel and example; its members individually are the outposts and picket line to guard and to give warnings, and by their collective wisdom they must give support to each other and devise ways and means for the general protection and preservation. Such is the aim and the function of this association. No other has a field of greater importance or higher nobility for its work. It can and should do much in fulfillment of the promises of its constitution, and so doing will prove a boon to the profession and of material benefit to society and the state.

In outlining objects which seem desirable of accomplishment I have not found serious difficulty, and so far as it has been extended there may not be, within our membership at least, much difference of opinion, except for omissions, and perhaps as too optimistic. But in coming to the suggestion of means to the end sought, the difficulties are overwhelming in detail and in contingencies, and there is so much of the problematical that I am deterred from any attempt at solution, and must leave that important subject for your future treatment, calling attention



only to a few patent defects in operation. A first essential is your earnest and persistent coöperation and activity. Your meetings should be held annually without fail, and should be provided with addresses, reports and discussion upon live topics of interest to the profession. They should enlist a general attendance of members, and every proper encouragement should be extended for an increase of membership to make the association truly representative of the bar of the state and of every section. Your president and officers should be elected from the active practitioners, bringing to their work the enthusiasm and the strength which come from the contest and the intimacies of the legal arena, and I venture a suggestion that rotation in office would be advisable. The all-important matters of the qualification to be required for admissions to the bar and of enforcing compliance with the duties and conduct thereby imposed, after admission, should have your constant attention and care. We are fortunate that legislation is not restrained here as it is by constitutional provision in some sister states whereby the gateway of admission is practically open to all. For example, it was remarked recently by one of my colleagues on the bench that in Indiana the constitution provided that any citizen of lawful age and good moral character was entitled to admission to the bar, being the same qualification which is there also prescribed for a license to dispense liquors in a place termed "a bar" in the vernacular. I believe great good has come from our system of state commission for all examinations for admission, aside from the certificates of graduation in the law department of the university. Your recommendations for any improvement would undoubtedly be well received and considered. I have heard it suggested that a requirement for admission to the full privileges of the law department of the university might well be based upon a graduation from some stated school or course which would assure some degree of general qualification. It may well be considered whether a definite term of study in a law office, either before or after graduation, would not be the more just and effective artificial standard for admission. No reflection must be implied out of these passing remarks against the excellent work which is accomplished in the law school, the invaluable quality of that work being attested by the high professional standing of many of its graduates.

## CHAPTER XI.

### THE MILWAUKEE BAR ASSOCIATION.

BY C. I. HARING.

Closely associated with the history of Milwaukee is that of the Milwaukee bar association. Prior to 1858 there were many lawyers engaged in active practice, a number of whom were educated young men, graduates of eastern colleges who had chosen Milwaukee as their home, and during their active professional career in this city did much to improve the jurisprudence of Wisconsin, and for many years took an active interest in every enterprise affecting the interests of that city and the state. These public spirited members of the bar are entitled to much more credit than is usually accorded to them. The records of our supreme court are enriched by their most careful work; on the bench, at the bar, in the legislative halls, in the city council and in the business world they have acted well their parts. In the earlier days a much more fraternal and social spirit obtained among the lawyers of Milwaukee and a much more public spirit was shown by them than appears to exist at the present time.

The original records of the association disclose many evidences of this public spirit. It appears from the original minutes now in the hands of Mr. C. I. Haring, the present secretary of the association, that during the month of May, 1858, a committee was appointed to procure the passage of an act for the incorporation of a library association. At an adjourned meeting of the association of the bar of Milwaukee, held May 23, 1858, this committee reported their success by presenting a copy of a bill certified by the secretary of state to be a true copy of an act to authorize the incorporation of law schools and law library associations, which had been passed by the legislature of that year, and is now known as chapter 126 of the laws of 1858. This law authorizes the incorporation of law schools and law library associations by any num-

ber of persons not less than nine; such incorporation shall have perpetual succession and shall have and enjoy all the privileges, franchises and immunities incident to a corporation, and shall be capable in law of suing and being sued, pleading and being impleaded, answering and being answered unto, defending and being defended in all courts and places in any and all manner of actions, suits, complaints, matters and causes whatsoever. They may make, have and use a common seal, and alter, break, amend and renew the same at pleasure, etc.

Acting under this general law and for the purpose of organization, a meeting of the association was held shortly thereafter, and the following named members of the bar were named as a committee to execute a proper testimonial:

Edward G. Ryan, Nelson Cross, John B. D. Cogswell, James S. Brown, Norman J. Emmons, Ammi R. R. Butler, Jonathan E. Arnold, Otis H. Waldo and Henry L. Palmer.

On October 23, 1858, these members of the committee presented to the bar association a written testimonial of incorporation of the Milwaukee law institute with a capital stock of \$100,000, and the avowed object and purpose of establishing, organizing and conducting in Milwaukee a law school and law library association. This testimonial appears to have been duly acknowledged before Matthew Keenan, who was then the clerk of the circuit court. It is to be observed in passing that the subsequent records of the bar association contained resolutions on the death of nearly every member of this committee, and not one of the survivors is now in active practice in Milwaukee.

The original subscription to the stock shows the following names:

J. E. Arnold, \$1,000; Butler, Buttrick & Cottrill, \$2,000; Finches, Lynde & Miller, \$2,000; Cary & Pratt, \$1,000; H. L. Palmer, \$1,000; Levi Hubbell, \$500; Brown & Ogden, \$1,000; Henry F. Prentiss, four shares, \$100; Hooker & Spankenberg, \$500.

Subsequent records show that no further steps were taken towards perfecting or acting under this incorporation.

During the year 1858 the members of the association of the bar of Milwaukee, which had been previously organized, adopted a general



constitution which was subscribed by all the most prominent lawyers then in active practice. This constitution sets forth that the members of the bar of Milwaukee, being desirous of establishing and maintaining a higher standard of professional acquirement and deportment and of promoting a proper degree of harmony amongst its members, have organized, etc.; and it is expressly stated that one of the particular objects of the association is to settle all differences that may arise between its members in professional matters, and for that purpose whenever a complaint shall be made to this association in writing by one member against another, the association shall have authority to hear and investigate the same, giving in all cases the parties interested full opportunity of being heard, and in case any member shall refuse to comply with the decision of a majority of the members of the association upon such matters of complaint he shall forfeit his membership.

These provisions undoubtedly had a very wholesome effect upon the members of the bar in placing each practicing lawyer upon honor to deal fairly and act honestly, and some of the most interesting proceedings for disbarment to be found in our records were brought under the authority conferred by this first constitution. The original records show the names of:

Jonathan E. Arnold, E. G. Ryan, H. N. Wells, Matt. H. Carpenter, A. Finch, M. H. Finch, Arthur McArthur, Levi Hubbell, H. L. Palmer, John B. D. Cogswell, Thos. L. Ogden, N. J. Emmons, W. A. Prentiss, Otis H. Waldo, Wm. P. Lynde, A. R. R. Butler, Wilson Graham, James S. Brown, James B. Cross, Joshua Stark, J. H. Van Dyke, Byron Paine, A. G. Miller, Edward Salomon, Chas. A. Hamilton, James G. Jenkins, D. A. J. Upham, C. K. Wells, Winfield Smith, B. J. Johnson. Among these are found some of the most prominent lawyers who have ever practiced at the Wisconsin bar: Jonathan E. Arnold and H. N. Wells were among the earliest arrivals in Milwaukee, and quickly took the lead in their profession. As a criminal lawyer, strictly speaking, Mr. Arnold never had an equal here unless it was Mr. Wells in his palmiest days.

Compared with Judge E. G. Ryan, Mr. Arnold stood out in marked

contrast. The following has been written describing these two great lawyers:

"Mr. Ryan, petulant, impatient of opposition, rolling his great eyes about seemingly in search of those terrible expressions of sarcasm and bitterness of which he knew himself master. Mr. Arnold, stately, courtly, richly humorous or eloquent, never out of temper, pouring out at last such outbursts of rich speech that the jury sat dumb under the spell."

The name of Matt. H. Carpenter calls before us one of the greatest constitutional lawyers of the country; this most brilliant and eloquent pleader is too well known by the people of Milwaukee to need further comment here.

Asahel Finch came to Milwaukee in 1839 and formed a partnership with H. N. Wells and Hans Crocker under the name of Wells, Crocker & Finch; in 1842 Mr. Finch formed a new partnership with William Pitt Lynde, under the name of Finch & Lynde. In 1857 Matt. H. Finch and B. K. Miller joined the firm, and the name was changed to Finches, Lynde & Miller, one of the best known and oldest firms of the west.

Arthur McArthur, whose name appears frequently in the records, was an active member of the association. He came to Milwaukee in 1849. He held many positions of trust, and died a very short time ago at the age of eighty-one years.

Mr. H. L. Palmer, N. J. Emmons and A. R. R. Butler all ranked among the ablest lawyers at the Milwaukee bar.

If space permitted, many interesting facts could be written of nearly all these men whose names appear in the list.

The first bar supper held in Milwaukee was given by Judge A. G. Miller in 1841 at his home, which was then in the present location of Marshall & Ilsley's bank on Broadway. There were twelve guests, among whom were Hans Crocker, Asahel Finch, Chas. J. Lynde, John Tweedy, J. E. Arnold, H. N. Wells, Wilson Graham, F. W. von Cotzhausen and a number of others.

On May 23, 1858, at a meeting of the bar, a formal fee bill was adopted; among the items are found the following:

Procuring a petition for divorce, to be paid or secured in advance..	\$ 50
Retaining fee in all litigated suits.....	20
Retaining fee in United States District Court.....	25
Collections, 10 per cent on \$300 or under; 5 per cent on excess to \$1,000; 2½ per cent on excess over \$1,000.	
Litigated cases for sums over \$1,000.....	40
Litigated cases in tort when settled before trial.....	25
Litigated cases in tort when tried.....	50
Argument for new trial.....	10
Services of counsel in litigated cases, per day.....	10
Foreclosure of mortgages over \$1,000.....	50
Arguing case in supreme court.....	75
Litigated cases before justices.....	10
Drawing petition for mechanic's lien.....	10
Drawing assignment for benefit of creditors.....	30
Supplemental proceedings .....	10

Fees in criminal cases (to be paid or secured in advance):

Managing case in police court.....	10
Habeas corpus cases.....	25
Defense in misdemeanor.....	25
Defense in felony.....	50
Defense in manslaughter or murder.....	100

At this same meeting steps were taken for the purpose of holding a bar supper, which was held on June 11, 1858, at the Newhall house, and the following are some of the toasts which were responded to on that occasion:

The Law: The zone of the universe, binding together alike planets and people; in heaven preserving order; on earth, life, liberty and property.

The Legal Profession: An ancient and honorable fraternity, distinguished in all civilized nations as the foundation of learning, the soul of patriotism, the expounder and defender of the right, the uncompromising foe of oppression and wrong.

The Executive and Judiciary Departments: Always respected by



the bar, they command our homage when they embody wisdom, learning and elevated moral character.

The American Lawyer: Less trammelled by forms, less awed by power than his brethren of the old world, he has equal necessity for varied learning, a broader field for eloquence and more commanding calls upon his zeal, generosity and patriotism.

Our Clients: In whom we live, move and have our being. May it be our very last cause that furnishes a complaint against them.

The Court of Cupid: A tribunal before which lawyers' pleas always please; where attachments are seldom dissolved; where the execution takes the body, and the supplementary proceedings never fail to satisfy the judgment.

The Printing Press and the Bar: Like the elements, the one with diffusive power sheds light, heat and moisture over the moral and political world; like the prudent husbandman, the other trains up the cherished plants of right, and plucks out the growing weeds of wrong.

The Judiciary of Our Country: Independent and pure, the stay and prop of our government and the protection of its citizens. Dependent and corrupt, the curse of the government and the despoiler of its people.

The Members of the Milwaukee Bar: Ever advancing in numbers, may they increase equally in solid learning, in spotless integrity, in fidelity to clients, and in honor, good fellowship and harmony amongst themselves.

Wisconsin Legislature: Successful in making bad laws, they will prove unsuccessful in breaking legal contracts.

The public spirit of the Milwaukee bar association was shown at a meeting called April 16, 1865, to take action on the death of President Lincoln. Resolutions were prepared and submitted which stated, among other things, "that while in his public life Mr. Lincoln has proven himself a man, a statesman and a patriot of clear head, honest heart and unfaltering loyalty, and in his life and death he has won for himself an immortal name in the history of this country, we rejoice that he has lived to seal his mission with the glory of success and the vision of a restored and fraternal union. Let us hope that the mantle of his many

virtues will fall upon his successor, and that his great name, courageous statesmanship, and devoted patriotism may animate and inspire for all time to come the young men of America."

Some of the most influential and best known members of the bar have from time to time occupied offices in this association. Jonathan E. Arnold was its active president from 1858 to 1869. His successors were: Wm. P. Lynde, A. R. R. Butler, and Joshua Stark. Among the gentlemen who have acted as vice-president are noticed the names of Judge Levi Hubbell, O. H. Waldo, James G. Jenkins and A. L. Cary. Those who have acted as secretary are John B. D. Cogswell, James G. Flanders, Burton Hanson, and Wm. H. Morris. Mr. J. R. Brigham acted as treasurer for upwards of twenty years.

The present officers and members of the committees are as follows: B. K. Miller, president; General F. C. Winkler, vice-president; Cornelius I. Haring, secretary; Otto R. Hansen, treasurer. Executive committee: Chas. Quarles, Edward P. Vilas, and H. A. J. Upham. The standing committees are as follows: Committee on membership, L. W. Halsey, J. E. Friend, R. B. Mallory, J. F. Burke, and Herman Fehr; committee on grievances, James G. Flanders, G. D. Van Dyke, Frank M. Hoyt, Herbert Knight, J. F. LaBoule; committee on amendment of law, J. V. Quarles, Joshua Stark, David S. Ordway, Geo. C. Markham, and T. C. Benedict; committee on legal education, F. W. von Cotzhausen, Geo. H. Noyes, W. W. Wight, J. R. Brigham, and W. C. Williams (the two last named are recently deceased).

## CHAPTER XII.

### THE FIRST CIRCUIT, AND ITS JUDGES AND LAWYERS.

As formed by the constitution, the first judicial circuit was composed of the counties of Racine, Walworth, Rock and Green. It has been changed from time to time and now consists of Walworth, Racine and Kenosha counties. This circuit has been presided over by more judges than any other in the state, having had not less than twelve occupants of its bench. Many of its judges have been men of the first rank in respect of both character and ability. Edward V. Whiton, James R. Doolittle, William P. Lyon, Robert Harkness and John B. Winslow are among those who have administered justice there. The bar of the first circuit in early days was a strong one, including Marshall M. Strong, John W. Cary, C. M. Baker, J. B. Casoday, John R. Bennett, John T. Fish, the judges named, and others. Some of these have passed to the other world; some have removed to other circuits by choice or been transferred by legislation. Except for the city of Racine the circuit would be a rural one; hence the temptations and rewards which follow commercial and corporation cases have drawn many able men from the bar of the first circuit.

#### THE BENCH.

Following are sketches of the judges of this circuit, except so far as they are given elsewhere and excepting Judge Harkness, of whom no information of a biographical character has been obtained, Edward V. Whiton being sketched in chapter IV and William P. Lyon and John B. Winslow in chapter VII.

#### WYMAN SPOONER.

This gentleman was for a brief time judge of the first circuit. He was born at Hardwick, Worcester county, Massachusetts, in July, 1793;



removed to Vermont, and, being a printer, edited and published the Vermont Journal at Windsor for several of the earlier years of his manhood. He read law at Chelsea, Vermont. In 1835 he removed to Tuscarawas county, Ohio, where he practiced law. In 1842 he came to Wisconsin, first locating at Racine, and in 1843 removing to Elkhorn, Walworth county, where he resided and practiced law many years. During 1847, 1848 and 1849 he was judge of probate; he served in the assembly in 1850, 1851, 1857 and 1861—being speaker in 1857. In 1862, 1863 he was state senator and for a part of the time president of the senate. From January 14, 1863, to January 3, 1870, he was lieutenant governor. His judicial career was as judge of the first circuit from June 15, 1853, to January 1, 1854, he having been appointed by Governor Farwell to fill the vacancy caused by the election of Judge Whiton to the chief justiceship of the reorganized supreme court. Judge Spooner died near Geneva, Walworth county, November 18, 1877.

It has been said of him that he was a lawyer of more than average ability; that he possessed a clear, logical and discriminating mind; that while he was an able advocate he was not endowed by gifts of oratory, and that if he could not convince by argument he did not seek to persuade by eloquence. He was honest and earnest in the discharge of every public duty; was a good presiding officer, fair, impartial and courteous. He was polite in social intercourse and had a nice sense of propriety and order on all occasions. He loved debate and never asked or gave quarter, but never treasured animosity.

#### JAMES R. DOOLITTLE.

James Rood Doolittle was born January 3, 1815, at Hampton, Washington county, New York. His father, Reuben Doolittle, upon emigrating to Genesee county, in western New York, became a farmer, mill owner and merchant, in prosperous circumstances. His mother, Sarah, nee Rood, was an estimable lady who devoted herself to domestic duties and to the education of her children and instilling into their minds the principles of honor and virtue. James R. was the

eldest son in a family of four boys and two girls. After the usual preliminary education he was sent to Geneva college, in western New York, and early began to show that ability which distinguished him in after years. Gifted with a retentive memory and a clear understanding, combined with a genius for hard work and diligent application, he easily led his class and graduated with honors.

Having chosen the law as a profession, he studied its theory and practice with Harvey Putman at Attica, New York, and with Isaac Hills, of Rochester, New York, and was admitted to practice by the supreme court of that state in 1837. It was not long before the young lawyer was recognized as one of the coming men of his profession. His thorough knowledge of the principles of the common law and his facility in applying them, aided by an extensive and varied course of reading, a pleasing and musical voice and an easy and fluent delivery, marked him as one destined for certain and rapid preferment.

About this time he removed to Warsaw, Wyoming county, New York, where his ability was soon recognized and rewarded; and, although a democrat, he was elected district attorney by a whig constituency. Having discharged the duties of that important office with satisfaction to the people and credit to himself, Mr. Doolittle, in 1851, went to Racine, Wisconsin, and there practiced his profession, and in a short time was ranked among the ablest lawyers of that state and retained by Governor Farwell in cases involving the interests of the commonwealth and intricate questions of law. It is unnecessary to say that his practice became large and lucrative and that experience developed the legal ability already recognized.

In 1853 Mr. Doolittle was elected judge of the first judicial circuit of Wisconsin. No higher or more pleasing tribute can be paid to a lawyer than his elevation to the bench. As such, Judge Doolittle accepted it, and applied all his knowledge and experience to the discharge of his duties. In this case the office sought the man, and, what is more, sought the right man. For three years he discharged the important duties of his trust with ability, simplicity and dignity. He had the rare power of combining the "*suaviter in modo, fortiter in re.*"

When he resigned, in 1856, he received the highest encomiums from the press, the people, and the profession. No sooner had Judge Doolittle laid down one honor than another was given to him. In January, 1857, the legislature of Wisconsin elected him United States senator and reëlected him in 1863 to the same office. The period during which he was in the senate was the most momentous since the founding of the republic and may be divided into three epochs: First—Before the war, when the question was the extension of slavery. Second—During the war, the period of secession. Third—After the war, when the issue was reinstatement or reconstruction. Each of these periods was fraught with danger to the republic and grave responsibilities rested on the representatives of the people. In these crises the patriotism, ability and integrity of the young senator soon became conspicuous. Grasping the situation with almost prophetic intuition, he used the whole force of his great intelligence, the powerful influence of his classic eloquence, and supplemented both with the untarnished honor of his spotless character, in the endeavor to prevent the threatened disruption. When the effort to secure peace with honor failed and the tocsin of civil war smote the ear with its invitation to deadly strife, he, like other patriotic citizens, accepted the challenge and devoted himself unsparingly to the preservation of the Union. Later, when the terrible struggle, involving the loss of hundreds of thousands of human lives, was over, came the period of reinstatement, when the great moral force and patriotic fire of Senator Doolittle was stimulated to rouse the country to the duty of the hour. His eloquent and forcible speeches of that time are historic evidence of his foresight and statesmanship. As a member of the committee of thirteen, appointed by the senate to devise a plan to prevent disruption, he labored for that object with all his power of mind and body. When war became inevitable he used his whole strength to defeat the rebel arms. When the war was over, he, as a representative of the people, counseled moderation and reconstruction. Taking the constitution for his guide and acting from sincere conviction he strove then, as through his whole life, for the eternal principles of truth and justice. He was



chairman of the joint committee appointed to inquire into the condition of the Indians in Kansas, Colorado and New Mexico. The published report of this committee is the most exhaustive and valuable that has ever been compiled on the subject.

Soon after the accession of Andrew Johnson to the presidency Senator Doolittle became a supporter of his policy, and thenceforward acted in opposition to the republican party. In 1871 he was the democratic candidate for governor of Wisconsin against C. C. Washburn.

It would be trespassing on the domain of history to recount here the calls to conventions written, the speeches delivered, the public men with whom he has worked, and the political issues he has originated or supported. It is only necessary to add that Judge Doolittle's life has been busy, honorable and useful; and, as expressed by a friend of his, "Like a clear, limpid stream, wherein you can see the form and color of the pebbles at the bottom, and through whose meandering course no sediment appears."

Judge Doolittle was a man of fine physical development. Even at the age of nearly four-score he was a man of powerful build, with pleasing and expressive features, and a voice strong and sonorous. When young he must have been trumpet-tongued. He had the "powers of speech that stir men's blood," and retained that power for a longer period than most men of his ability. Yet it was not alone the features, the voice or the figure that challenged attention, but there was a force of character that impressed, an influence that impelled and a magnetism that attracted. No man during the past fifty years has addressed larger masses of people or has addressed on political subjects as many people. He was a master of the art of rhetoric. His language was clear, simple and graceful, and he led his auditors through a long argumentative path, decked with classic allusions that, like flowers on the border of a stream, seemed to be native there.

He was very happy in epigram. After Abraham Lincoln's second nomination for the presidency, a cabal was formed in his state with the hope of forcing him to retire. At a mass-meeting, where one of the

discontents had been the first speaker and had delicately hinted at the desirability of Mr. Lincoln's retirement, Judge Doolittle, who had listened with feelings more easily imagined than described, was called as the second speaker. There was a vast audience of probably twenty thousand people, who listened to the previous speaker in ominous silence. The Judge arose and in slow, clear, solemn tones, and with his right hand raised to heaven, said: "Fellow-citizens: I believe in God Almighty, and, under him, I believe in Abraham Lincoln." The spell was broken and the vast audience cheered for fully half an hour. No more was heard of the opposition to Mr. Lincoln.

After Judge Doolittle retired from the senate in 1869, though he retained his homestead and citizenship in Wisconsin, he was engaged in the practice of law in Chicago. His first partnership was with Mr. Jesse O. Norton, under the name of Doolittle & Norton. After the great fire of October 8 and 9, 1871, he formed a partnership with his son, under the firm name of J. R. Doolittle & Son. In 1879 Mr. Henry McKey was admitted as a partner in the business and the firm name became Doolittle & McKey. After the death of Mr. James R. Doolittle, Jr., which occurred in 1889, Mr. Edgar B. Tolman became a member of the firm, and the firm name became Doolittle, McKey & Tolman. Mr. McKey died in January, 1892, and John Mayo Palmer became associated with Senator Doolittle and Mr. Tolman, under the firm name of Doolittle, Palmer & Tolman.

Judge Doolittle suffered one of the great afflictions of his lifetime in August, 1889, when his son, James R., Jr., died. At the time of his death he was a member of the law firm of which his distinguished father was the head. He was an active member of the Chicago board of education, and devoted himself unsparingly to the interests of the city and suburban schools. He was a man of great ability as a lawyer, highly accomplished as a scholar, and his kindly, gentle nature endeared him to all.

After a pure, honorable, useful life, actuated by unselfish motives, prompted by patriotism and guided by truth and justice, Judge Doolittle departed this life July 23, 1897, at the home of a married daughter

in Rhode Island. At the meeting of the state bar association in February, 1898, Elbert O. Hand, J. V. Quarles and Joshua Eric Dodge were appointed a committee to prepare and present a memorial of the life and services of Judge Doolittle to the supreme court. That duty was well performed March 21, 1898. The memorial was submitted by Mr. Hand in a very pleasing address, to which Judge Winslow, on behalf of the court, responded as follows:

"With the death of James R. Doolittle there passed from the stage a remarkable figure and one of which Wisconsin may well feel proud.

"Born in the early years of the century, he almost reached its close with his mental powers unimpaired and a sturdy frame which showed but slightly the signs of his advancing age.

"Nor was his life one of quietness and ease; it was full to the brim of care, of labor and events. Early in life there came to him great and deserved political triumphs which brought with them equally great cares and responsibilities. He met these cares and responsibilities with a fortitude born of lofty resolve and an unfailing devotion to his duty as a man and a citizen. There came to him later bitter disappointments and crushing sorrows, and he met these with the same lofty resolve.

"Fate placed him in the forefront of events at a momentous crisis in the national history, when the destiny of the republic was trembling in the balance and the future seemed dark and doubtful. The test was supreme, but it was fully and bravely met. Standing by the side of the great Lincoln, as one of his trusty and trusted counselors, he rose to the full stature of a statesman, able to cope with the greatest questions and fit to properly represent this great commonwealth. His services to the state and nation and to the cause of free government during the twelve years which he spent in the senate cannot be easily overestimated. He left that high office poor in purse, but rich in the consciousness of having patriotically performed his duty and of having bravely borne no small share in the great battle to preserve human liberty and free institutions.



"He was, without question, a lawyer of great learning and breadth of mind; but the imperious call to the greater duties of a national legislator took him from the bar for so long a period during the very prime of life that his career as a lawyer was never rounded out to the full, and hence it is that he will be remembered for his achievements as a statesman rather than on account of his greatness as a lawyer.

"It was my good fortune to know him personally from my boyhood, and I can speak from a personal and intimate acquaintance of his character as a friend and neighbor and a private citizen. He was a Christian gentleman, with all which that name implies, and when I have said this I have said, perhaps, all that is necessary. He carried into private life and daily walk the same virtues, the same manly fortitude and the same resolve to do his duty, as he understood it, that he exhibited in public station.

"James R. Doolittle was a good man, as well as a great man; he honored his state and his state does well to honor him."

#### CHARLES M. BAKER.

Mr. Baker was born in New York city October 18, 1804. Soon thereafter his father and the family removed to Addison county, Vermont. In 1822 the subject of this sketch entered Middlebury college, but was prevented from prosecuting his studies by reason of his health; in 1823 he became an assistant teacher in a young ladies' school at Philadelphia and remained there two years. In 1826 he entered a law office in Troy, New York, and after three years of study there was admitted to the bar; in 1830 he formed a partnership with Henry W. Strong, a brother of Marshall M. Strong, long a prominent lawyer of Wisconsin, and removed to Seneca Falls, New York, where he practiced his profession until 1834, when his health made it necessary for him to change his pursuit. He returned to Vermont and engaged in the mercantile business. In 1838 he located at Geneva Lake, Walworth county, Wisconsin; in 1839 he was appointed district attorney of that county; he served as a member of the territorial council for the

counties of Rock and Walworth for four years, beginning with 1842. He represented Walworth county in the first constitutional convention and was chairman of the committee on the organization and functions of the judiciary, and took an active part in all the proceedings of that body. In 1849 the legislature appointed Mr. Baker the commissioner to superintend the publication of the revised statutes, included in which was the preparation of the marginal notes and index. In 1856 the governor appointed him circuit judge to fill the vacancy caused by the resignation of Judge Doolittle; his service in that capacity covered part of the months of March and April, 1856; not desiring to serve longer, he declined to be a candidate before the people. During the civil war Mr. Baker served as judge advocate in the first Wisconsin district. His death occurred at Geneva, February 5, 1872.

It has been said that "Mr. Baker was a profound lawyer, an able advocate, and in all senses an ornament to a profession which his learning adorned. He was a tireless reader and worker, ever ready in legal cases entrusted to him, all points in which received the minutest examination and most critical analysis. His habits were singularly quiet, unobtrusive and studious. His reading extended far beyond the requirements of his profession, covering the whole range of historic and scientific inquiry. He was largely gifted in mental powers, and, on a different field, would have achieved for statesmanship all that he did for law. He was, moreover, thoroughly honest and conscientious, an upright and worthy citizen, a kind and loved neighbor, and a valued friend. In all the relations of life he bore an honorable part—above suspicion as above reproach."\*

#### JOHN M. KEEP.

At the election in April, 1856, John M. Keep was, without opposition, called to fill the remainder of the term which Judge Doolittle had resigned one month previously and which during that period had been filled by C. M. Baker. Nearly four years remained of the unexpired term, but after a service of a little more than two years failing

\*"Fathers of Wisconsin," p. 40.

health compelled him to send his resignation to the governor, to take effect on the 17th of August, 1858.

John M. Keep, the second son of General Martin Keep, was born at Homer, Cortland county, N. Y., on the 26th of January, 1813. He was fitted for college at Cortland academy in Homer, and, in 1832, entered Hamilton college, where he was graduated, in 1836, with high collegiate honors. The same year he commenced his legal studies with Augustus Donnelly, a distinguished lawyer at Homer, and completed them with Horatio Seymour at Buffalo. He was duly admitted to the bar and commenced practice at Westfield, Chautauqua county, New York, which he continued until his removal to Wisconsin. In 1845 he located at Beloit, where he continued to reside until his death.

Mr. Keep not only became engaged at once in a very large law practice at Beloit, but he also took a very active part in every enterprise that promised to promote the growth of the place and enhance the welfare of society. He was extensively engaged in the purchase and sale of lands and erection of buildings, and took an important part in the promotion of institutions of learning and the construction of railroads, and in many of these enterprises was the animating spirit. He was the founder of the city of Darlington, now the county seat of La Fayette county, and was interested in the construction of the first buildings that were erected there, and was the contractor for building the southern half of the Mineral Point railroad. He was systematic in the employment of his time and performed rapidly and well a vast amount of varied labor. Moral courage, great energy, ready decision, self-reliance, self-control, and an indomitable will were the chief qualities of his natural greatness. He never exhibited vanity or egotism, and was never heard to exalt or speak boastingly of himself.

As a lawyer he was well versed in his profession, ever faithful to his clients, whose confidence and respect he never failed to command. As a judge he was composed, patient, impartial, kind and courteous, always easy to approach by every one; quick in his perceptions of every case, he never hesitated to reverse his decisions when convinced of error.



For the last two years of his life Judge Keep's strength gradually wasted away and death in its usual form never came near him, but simply for lack of strength, on the 2d of March, 1861, he passively ceased to breathe, and so passed away, leaving a record of great private worth and public usefulness.

### DAVID NOGGLE.

On the 27th of July, 1858, David Noggle was appointed by Governor Randall judge of the first circuit to fill the vacancy caused by the resignation of Judge Keep, which took effect on the 17th of August, at which time Judge Noggle's fractional term commenced. At the April election in 1859 the executive appointment was ratified by the people, and the judge was simultaneously elected for the fractional term, which expired January 1, 1860, and for the full term of six years ending January 1, 1866. He served the full period for which he was elected, but was not again a candidate for re-election.

David Noggle was born in Franklin, Franklin county, Pennsylvania, October 9, 1809. His father, Joseph Noggle, was of Dutch descent, and his mother, whose maiden name was Mary Duncan, of Scotch-Irish ancestry. His opportunities for education were limited to the public schools, and even of these he could avail himself for only a few weeks each winter. At the age of sixteen he removed with his parents to Greenfield, Highland county, Ohio. At the age of nineteen he left home to find some remunerative employment, and for four years was employed in a manufacturing establishment in Madison, New York. He then returned to Ohio and with his brothers carried on his father's farm for about four years, during which time he was married to Miss Anna M. Lewis.

In 1836 Mr. Noggle removed with his young wife to Winnebago county, Illinois, making the journey with an ox team. Here he purchased government land, which, under his industrious hand, soon became a valuable farm. It had been the ambition of his life to be a lawyer, which he never enjoyed the opportunity of gratifying. As he

had always relied upon himself in everything, at the comparatively advanced age of 27 (for a law student) he relied upon himself to acquire a legal education. He carried Blackstone with him in his daily toil, reading it while driving his ox team, and whenever he could find time by day or night, and without having spent an hour in a law office or received any assistance in his studies, he was, in 1838, after an examination by the supreme court of Illinois, admitted to the bar of that state.

In 1839 he sold his farm in Illinois and removed to Beloit, Wisconsin, where he opened a law office, and very soon attained a large practice, not only in Wisconsin, but in Boone and Winnebago counties in Illinois. He devoted himself exclusively to his profession and was highly successful. His lack of educational advantages and professional training did not embarrass him; the strong power of his will being adequate to overcome slight obstacles, and if his orthography was not always correct it conformed to phonographic modes and always had the advantage of *idem sonans*. He was a powerful and successful advocate before a jury, and by large experience and hard study became a very good lawyer.

In 1840 Mr. Noggle was appointed postmaster at Beloit and held the office about five years. Rock county elected, by general ticket, ten members of the first convention to form a state constitution, of which Mr. Noggle was one. He was prominent as one of the leading members of that body, his specialty being the subject of corporations, which was assigned to him. He soon after transferred the scene of his professional labors from Beloit to Janesville, where he continued to maintain and increase his successful practice. In November, 1853, he was elected as a representative in the assembly from the Janesville district and served during the year 1854. Three years later he was again elected for the same district, and served during the year 1857. From the 17th of August, 1858, to the 1st of January, 1866, his time was devoted exclusively to the performance of his duty as judge.

After his retirement from the bench he spent a short time in Iowa as attorney for the Milwaukee and St. Paul Railroad, and afterwards

returned to Beloit, where he resided until 1869, when he was appointed chief justice of the territory of Idaho, a position which he retained until 1874, when failing health compelled him to resign it. He spent a few months in California for the benefit of his health, which was, however, never restored. He returned to Wisconsin in 1875, where he remained in retirement, the victim of a chronic disease which affected his brain, and where he died on the 18th of July, 1878.

#### IRA C. PAINE.

Mr. Paine was born at Monkton, Vermont, in 1805. In 1847 he came to Wisconsin and settled in Racine, where he lived until his death, September 19, 1883. In his early days he had a good standing at the Racine bar—then a very strong one—and always maintained a high reputation for integrity. In 1875 he was appointed judge of the circuit court to fill the vacancy caused by the resignation of Judge Harkness, and in the election held after his appointment was the democratic candidate. He was unsuccessful, John T. Wentworth being chosen. In 1878 he was an unsuccessful candidate for district attorney of Racine county. During the later years of his life his practice was not extensive, and the accumulation of his early labors was barely sufficient for his need. Mr. Paine was an uncle of the gifted and lamented Byron Paine.

#### JOHN T. WENTWORTH.

The ninth judge of the first circuit was John T. Wentworth. His service in that capacity began in 1876 and continued until 1884.

Mr. Wentworth was born in Saratoga county, New York, March 30, 1820; was educated in Union college, and graduated in 1846; "read law" with William A. Beach, of Saratoga Springs, and was admitted to the bar in 1850. After practicing his profession there about two years he moved to Chicago; after a stay of four years there he settled at Geneva Lake, Walworth county, Wisconsin. In 1857 he was elected



district attorney of that county and was reëlected in 1859. In 1869 he was elected clerk of the circuit court, and while serving in that office was elected circuit judge to fill a vacancy; his service in that office continued as stated. In 1877 Judge Wentworth changed his place of residence to Racine, where he continued to reside. He has served as state and United States court commissioner for some years, and also held the office of justice of the peace after the expiration of his term as circuit judge. Judge Wentworth died in February, 1893.

In October, 1852, Mr. Wentworth married Miss Frances McDonnell in Saratoga county, New York. His political affiliations were republican, and his religion Presbyterian. He was also a Mason of long standing, and held numerous offices in that order, including that of grand master in 1865, having previously served as grand senior warden.

#### FRANK MARSON FISH.

Frank M. Fish, judge of the first judicial circuit, including the counties of Walworth, Racine and Kenosha, was born in McHenry county, Illinois, July 4th, 1858. As he has already been an occupant of the bench since May, 1891, he was called to assume the duties of this high position when only thirty-three years of age—certainly a remarkable honor bestowed upon a man of remarkable legal and judicial talents.

Judge Fish's parents were John T. and Julia King Fish, and at different periods of his boyhood days his home was at Sharon, Walworth county, and at Burlington and Racine. He was educated in the public schools of these places and at the academy of John G. McMynn, a celebrated teacher of the last named city. It was over much of the territory, therefore, with which he had become familiar as a schoolboy that he was in his mature manhood to preside as a learned and an honored judge. After being firmly grounded in the preliminary and academic studies, he took a course in the university of Wisconsin. He then began the study of law in the office of his father, a member of the firm of Fish & Lee.

Admitted to the bar in August, 1879, Judge Fish began practice in

partnership with his father. The firm continued as John T. & F. M. Fish until August of the following year, when the junior member removed to Fargo, Dakota. He was at first associated with H. F. Miller, and subsequently formed a partnership with G. H. Dickey at Valley City, Dakota. Although his abilities were recognized so generally that he was elected city attorney in 1882 and 1883, he decided to return to his old home in Racine, evidently laying little stress upon the adage regarding the withholding of honors from a man in his own country.

To his old home Judge Fish also bore a bride, Mary A. Stowe, of Waterville, Minn., to whom he had been married on the 2d of January, 1884. Mrs. Fish is the daughter of Major Lewis Stowe, of that place, and Hannah Babcock Stowe, and a descendant of the old and influential Massachusetts families of Stowe and Ames. They have one child, Franklin.

Judge Fish returned to Racine in the May succeeding his marriage and at once became a member of the firm of Fish, Dodge & Fish. After John T. Fish, the senior member, removed to Milwaukee, the style was Dodge & Fish. His abilities as a lawyer, a public-spirited citizen and an influential republican were soon conceded, and in the fall of 1887 he was elected to the position of district attorney. He refused to become a candidate for re-election, and Gov. Peck, in May, 1891, elevated him to the circuit bench, as has been previously stated, to fill the vacancy caused by the appointment of Judge Winslow to the supreme court of the state. In April, 1892, he was elected over Judge James R. Doolittle to fill the unexpired term to which he had been appointed. In April, 1895, such had been his high and clear record, he was re-elected without opposition; his term expires in January, 1902.

As further indicative of Judge Fish's character it may be stated that he is identified with the Masonic fraternity and Knights of Pythias; is a member of the Episcopal church; is domestic and studious in his tastes, and spends much of his time in his extensive library. Being yet in the very prime of life, he has evidently a most alluring future before him.

**THE BAR.**

## ALANSON H. BARNES.

Mr. Barnes was born in Turin, Lewis county, New York, April 15, 1817. His early educational advantages were limited to such as were common to the boys of his time. Before he entered upon the study of the law in the office of David M. Bennett, in his native county, he had become a married man. His admission to the bar occurred about 1846. His success as a lawyer in his native state, says a newspaper published there, was abundant and the practice was unremittingly pursued until his removal to Wisconsin in 1856. In that year Mr. Barnes became a resident of Delavan, Walworth county, and continued to reside there until his death, except when in the territory of Dakota in the capacity of judge. He continued to practice law in Walworth county, and also engaged in farming. March 24, 1873, he was appointed an associate justice of the supreme court of Dakota, and was reappointed April 23, 1877—his service in that capacity extending over about eight years. A writer in the Lowville (New York) Times of May 29, 1890, says that the exacting duties, requiring prudent foresight, nerve and firmness, performed by Judge Barnes while on the bench in that territory are little known. The writer was with him when he held the first United States district court ever held at Bismarck, Dakota, the court, grand jury and marshals being in dependence for the effectiveness of their official action on Gen. Custer's force at Fort Abraham Lincoln, across the Missouri, almost in sight of the town. When the court and officials at Deadwood, in the Black Hills, were overawed and paralyzed, Judge Barnes was ordered there to hold court. After crossing several rivers with a four-horse stage, the judge and three others, carrying with them Winchester rifles, reached the town; he held court, tried and sentenced for twenty years a man charged with murder, although a large number of the defendant's adherents confronted the court armed with rifles during the trial. Judge



Barnes' written opinions are reported in the first two volumes of the Dakota reports.

At the close of his service in Dakota Judge Barnes returned to Delavan. His health was shattered so that he could not resume the practice of the law; he was able, however, to be about his home until within four days of his death, which occurred May 10, 1890.

His first wife, Miss Clarissa Hills, of his native county, whom he married September 3, 1838, died December 10, 1856; he subsequently married Miss Sarah J. Allen, sister of the late William C. Allen, of Walworth county, who, with three children—Lucian A. Barnes, of Fargo, North Dakota; Fannie, wife of Judge A. D. Thomas, of Fargo, and D. B. Barnes, of Delavan, Wis., survive him.

#### CALEB P. BARNS.

Caleb P. Barns was born at Owego, Broome county, New York, January 12, 1812; came to Wisconsin in 1842; located at Burlington, Racine county, and practiced law there ten or twelve years, with considerable success. He was a member of the assembly in 1850 and 1855. He abandoned the law as a profession on account of his health and entered into financial business, which he pursued with great success. He died October 29, 1866.

#### JAMES CAVANAGH.

James Cavanagh is the son of James and Katherine (Cox) Cavanagh. His parents were both natives of Ireland. His father, a farmer and nurseryman, came to Wisconsin about 1847, having previously resided for a time in Canada. His mother first settled in Troy, New York, and afterwards removed to Kenosha, Wis., where she met Mr. Cavanagh, to whom she was married in 1850.

In Kenosha, Wisconsin, January 23, 1853, was born the subject of this sketch, his boyhood days being not unlike many of those placed in similar circumstances. He assisted his father and attended the public schools; also entered the state normal school at Oshkosh, but later

decided that his future lines were not to run in the pedagogical field, but in the province of the law. A fortunate circumstance in his early life, preparatory to the adoption of his professional career, was his entrance as a law student into the office of J. V. & C. Quarles, who stood in the front rank of the bar of southeastern Wisconsin.

After passing a creditable examination, Mr. Cavanagh was admitted to the bar in November, 1876, and in March of the succeeding year removed to Stevens Point, Wisconsin. A professional experience of one and a half years in that city, however, confirmed him in a determination, which had been gradually growing, to return to his old home. This he accordingly did and has since resided in Kenosha, his legal business and reputation increasing rapidly and growing substantially. For one year he was a partner with Charles Quarles and for six years with Peter Fisher, the style of the latter firm being Cavanagh & Fisher. This partnership was dissolved in September, 1897, since which time Mr. Cavanagh has been an independent and successful practitioner.

Mr. Cavanagh has held several important judicial and political positions and it is perhaps needless to say that he has filled them acceptably, bringing to the discharge of his public duties the same qualities of industry, concentration and faithfulness which have marked the discharge of his private and legal affairs. In behalf of the republicans he has taken quite an active part in state campaigns, having served for two terms as district attorney of Kenosha county (from January, 1881, to January, 1885). He also is court commissioner of both the circuit and the United States courts, and was city attorney of Kenosha for several years. His executive abilities and his talents as an educator were furthermore recognized by his selection as superintendent of schools, which position he held from 1881 to 1889.

Mr. Cavanagh is a good business man, as well as a lawyer, being interested in several financial and manufacturing enterprises. He is both a stockholder and general counsel in the Northwestern Loan & Trust Company and the Davy Burnt Clay Ballast Company.

Mr. Cavanagh's wife was formerly a Miss Nellie P. Parkinson, to

whom he was married at Oshkosh in April, 1877. They have two children—Walter J. and Richard P.

#### HENRY ALLEN COOPER.

Henry Allen Cooper, member of Congress from the first district of this state, is a native of Walworth county, Wisconsin, the son of a physician. He attended the district school of the neighborhood, and afterward entered the Northwestern University at Evanston, Illinois, where he was graduated in 1873. Immediately after graduation from the university he entered the Union College of Law, in Chicago, from which he received his diploma in 1875. Mr. Cooper resided in Chicago for four years after graduating from the college of law, and then took up his residence in Burlington, Wisconsin, and began the practice of law. In 1880 he was elected district attorney of Racine county, and became a resident of Racine. He was reëlected, without opposition, in 1882, and again in 1884. In the latter year he was chosen a delegate to the republican national convention at Chicago, and in 1886 was elected to the state senate. In 1892 the republicans of the first district nominated and elected him to Congress. So faithful and satisfactory had been his record in his first term that he was renominated, without opposition, in 1894, and elected to the Fifty-fourth Congress by a majority of 5,195 over his three opponents. In 1896 he was again renominated, without opposition, and was elected by a plurality of 13,512 over his democratic competitor, and by a majority over all the other candidates of 3,428. In August, 1898, he was in like manner renominated for Congress.

Mr. Cooper resides in Racine and is a member of the law firm of Cooper, Simmons, Nelson & Walker, of that city.

#### EXPERIENCE ESTABROOK.

Experience Estabrook was born in Lebanon, Grafton county, New Hampshire, April 30, 1813; was educated in the common schools and by private tutors; he resided for a short time at Alden, Erie county, New York; came to Wisconsin and settled at Geneva, Walworth county,



in July, 1840; served as district attorney and school commissioner before 1847, in which year he was chosen a member of the second constitutional convention; in that body he was chairman of the committee on education and school funds. "While he made but few speeches in that convention, they were uniformly upon the most important subjects pending, and always terse, logical and to the point. . . . In all the discussions reported, his views and his acts were conservative—never extreme—and his reasoning was marked by a solidity and cogency that time has long since demonstrated to be correct. Possessing abilities and legal acquirements of a high order, and a noble and patriotic purpose to aid in the erection of a state worthy of its people, his work has left a marked and enduring impress on Wisconsin, where his name should ever be held in high honor." In 1851 Mr. Estabrook was a member of the assembly from Walworth county, and was attorney general from January, 1852, until January, 1854.

About the close of his term as attorney general Mr. Estabrook was appointed United States district attorney for the territory of Nebraska, and settled in Omaha in January, 1855; he served in that capacity over four years, as a member of Congress one term, a district attorney for Douglas county, and a member of the constitutional convention of 1871. He revised the laws of the territory in 1866 and produced an approved form book. His death occurred at Omaha, March 26, 1894.

The Omaha bar adopted eulogistic resolutions commemorative of Mr. Estabrook, and glowing tributes were paid his memory by Judges E. Wakeley and James M. Woolworth. A. C. Baldwin made some interesting remarks, mainly with reference to a case in which his client, charged with an assault with intent to kill, was prosecuted by the subject of this sketch. Mr. Baldwin said that "after listening to his argument to the jury I could but congratulate my client that the verdict of the jury was not murder in the first degree, although the woman was not quite dead from the wound inflicted nor was my client indicted for a crime other than an assault with intent to murder. He created a lasting impression that the defendant was not entitled to life or liberty."

Among Mr. Estabrook's Wisconsin experiences it is recorded that he attended the first term of the first court held in Elkhorn, Walworth county, and brought the first case in bankruptcy; that he owned a dog, a near relative to Judge Irvin's "York," which insured him much success in practice in the judge's court; that he once examined Judge William P. Lyon concerning his qualifications to teach school, and that he put the first boat, the schooner-rigged "Ariel," of five tons, on Geneva lake.

A story is told concerning Mr. Estabrook and the late Chief Justice Ryan which may be worthy of preservation. It relates to the time the former was attorney general, and is to the effect that he was a good deal of a sporting character and fond of horses and dogs; that he was not considered a very great success as a lawyer; was on the go a good deal, moving from point to point restlessly, pursuing something, no one hardly knew what. During his term he came into contact with Ryan before the supreme court; the latter lost patience with Estabrook, and during the argument stigmatized him as the "vagabond attorney general." The court felt its dignity affronted by the use of such language and cited Ryan to show cause why he should not be punished for contempt. His defense was that he used the word "vagabond" in the sense given by Webster's dictionary—that the definition of the word was to wander, to move about, to strut, etc.

"Reduced, like Hannibal, to seek relief  
From court to court, and wander up and down,  
A vagabond in Africa."

Notwithstanding the argument, the court imposed a fine of twenty-five dollars, which was promptly paid. It is said that on the announcement of the court's ruling Mr. Ryan remarked to some of his professional brethren that the imposition of such a fine upon him for expressing his opinion of the attorney general led him to wonder what the penalty would be if he expressed to the court his opinion of it.

## ENOCH W. EVANS.

Enoch Webster Evans was born at Fryeburg, Maine, on the 16th of July, 1817. He pursued a thorough preparatory course of study at the Fryeburg academy in his native village, and entered Waterville college, where he was a classmate of B. F. Butler; remained there two years and then went to Dartmouth college, where he was graduated in 1838. He then studied law at Hopkinton, Merrimack county, New Hampshire, in the office of Judge Chase, for a period of two years, at the same time teaching school there. He went to Maryland, but, not being pleased with prospects there, came west in 1840, and entered the law office of Giles Spring in the city of Chicago, where, in the same year, he was admitted to the bar. He soon located at "Dixon's Ferry," on Rock river, now the county seat of Lee county, Illinois, where he commenced practice and continued it there for many years. Afterwards he changed his location and removed to Kenosha, Wisconsin, where he entered upon a highly successful practice, which he continued until 1858, when he removed to Chicago. In 1859 he removed his family to Chicago, and gave up entirely his professional business in Wisconsin and continued to reside and actively practice his profession at Chicago until the time of his death, September 2, 1879.

Mr. Evans was a finished scholar, a thorough and scientific lawyer, a man of genius and superior natural talents, of excellent forensic faculties, a genial, courteous and polite gentleman, and sustained, as he well deserved, a high rank in the profession.

## DAVID H. FLETT.

David H. Flett, judge of the municipal court of Racine county, was born in Scotland, September 12, 1846. He came to the United States and Wisconsin with his parents at an early age and was educated in the district schools of Kenosha county, the high school at Racine and Oberlin college at Oberlin, Ohio. He was admitted to practice in 1880 and has since that time conducted a general law business at



Racine. During his professional career he was at one time a member of the firm of Flett & Wentworth, and for fifteen years junior partner in the firm of Hand & Flett.

### CHRISTOPHER C. GITTINGS.

The firm of Palmer & Gittings conducts a general law practice at Racine, Wisconsin, where they have been associated together since 1891. Walter C. Palmer, senior member of the firm, was born at Waterford, Racine county, Wisconsin; was educated at the schools at Waterford, the state university and law school; was admitted to practice in 1881, and for ten years conducted a business by himself in Racine county.

The junior member of the firm, Mr. Christopher C. Gittings, was born in the town of Caledonia, Racine county, and received his education at Racine academy and college. He was admitted to the practice of law in 1889, from which time until 1891 he was associated with Percival S. Fuller, at Racine, and then formed his present partnership with Mr. Palmer.

The firm of Palmer & Gittings does a general law business, but gives special attention to commercial, corporation and probate matters. Mr. Gittings was city attorney of Racine for five successive terms.

### ELBERT OSBORNE HAND.

Elbert O. Hand, late judge of Racine county, is one of the most respected members of the Wisconsin bench and bar, painstaking and conscientious and successful, possessing the confidence of all with whom he has had professional dealings for nearly forty years. The son of John S. and Imogene (Cowles) Hand, he was born in New Lebanon, Columbia county, N. Y., November 29, 1830. His father was by trade a machinist, and from all accounts he was not only a good one, but a man of more than average education and influence. The mother was a woman of strong character and when, in 1841, the family removed to the almost unsettled district of Wisconsin, in which is now the village of Lyons, she brought to bear all those qualities of steadfastness, economy

and practical bravery which have ever done so much to uphold the pioneers of all countries through their hardships and trials.

In Wisconsin Mr. Hand took up land, and his son, Elbert, as the eldest of the family, assisted his father on the farm, gaining thereby the strength of constitution which was to hold him in such good stead in the arduous duties of after life. His constitution was further hardened, also, by his California experience, for during the gold excitement of 1848-'49 he had a severe attack of the fever and, although only a boy of eighteen, started from home with the van of emigration, and with an ox team journeyed across the plains to Placerville. He was six months on the way and the journey and subsequent experiences formed an epoch in his life which he could ill afford to have omitted. At this point, one of the first of the discovery, he commenced to prospect and later to mine. He was fairly successful for the three years of his residence in California, but, coming to the conclusion that his chances for an honorable and substantial future were better in more cultured communities, he returned east to complete his education.

After taking a partial collegiate course at Leoni, Michigan, Mr. Hand entered the sophomore class at the University of Wisconsin, and was graduated from that institution in 1859. From the very nature of his experiences his education had been somewhat interrupted, but having once decided upon his course of action and being in a position to follow it, he made rapid progress. As he had already determined upon the law as his profession and made considerable progress in his studies, he now applied his mind vigorously to its mastery, so that by 1860 he was graduated from the Albany law school. As Judge Lyon, who then resided at Racine, was an old family friend, he was induced by him to at once make that city his home. The first year of his residence there was passed as a clerk for the firm of Lyon & Adams, but during the second year he was admitted to membership in the firm, its style becoming Lyon, Adams & Hand. Judge Lyon was called to military service during the war, and while he was absent Mr. Hand was nominal head of the firm. Judge Lyon was elected circuit judge while in the army, and upon his ascension to the bench the firm became Adams &

Hand. It thus continued until 1868, when Mr. Adams left the state and retired from the bench of the county court, to which he had some time before been elected. Upon Judge Adams' removal from Wisconsin in the year named, Mr. Hand was appointed by Governor Fairchild Judge Adams' successor. For thirteen years he held the position and served his constituents so creditably that even after that period he was pressed to continue upon the bench. Declining a re-election, however, in 1881 he formed a partnership with D. H. Flett, which continued until the spring of 1897. At this time Mr. Flett was elected judge of the municipal court. In the meantime, in 1896, Judge Hand's son, E. B. Hand, had been admitted into the firm, so that, with the retirement of Judge Flett, it became known under the present name of E. O. & E. B. Hand. Its practice is of a general nature, and its reliability is unquestioned, Judge Hand himself being recognized as an able, safe and successful counselor, whose policy has been to discourage litigation, usually advising settlements or compromises out of court.

From 1888 to 1890 Judge Hand was district attorney of Racine county. He has been identified with the educational interests of the city, having served for several years as president of the school board. That he has never been a politician or a partisan is quite evident from his "voting record," which is as follows: While in California (1852) he voted for Winfield Scott; in 1856 for John C. Fremont; in 1864 for Abraham Lincoln; in 1868 for U. S. Grant; in 1872 for Horace Greeley; in 1876 for Samuel J. Tilden; in 1880 for Hancock; in 1884, 1888 and 1892 for Grover Cleveland, and in 1896 for McKinley.

Judge Hand has confined his activities quite strictly to his profession, the notable exception to the rule being the controlling interest which he has secured in the Winship manufacturing company, of which he is president and with which he has been identified since 1881.

For thirty-five years he has been a stanch member of the Presbyterian church, having been a trustee and elder for over thirty years of this period. For several years he has also been superintendent of the Sunday school and there are few persons in the denomination who are more generally known than Judge Hand. The pleasures of his domes-



tic life go hand in hand with his church work and when both are coupled with his intelligent love of books, one may gain an idea of his high character outside of his profession.

Judge Hand was married September 5, 1861, to Margaret S. Budd, of Chatham, Columbia county, New York. Their children are Mary Elizabeth, now Mrs. John D. Rowland of Milwaukee; Imogene F., now Mrs. R. Carpenter of Racine; Elbert B., in partnership with his father; Jessie L. and Edith M. Hand, excepting the youngest, all graduates of the University of Wisconsin.

#### JOHN M. HAYES.

Mr. Hayes was born at Berwick, York county, Maine, August 30, 1838; graduated from Dartmouth college in 1860; studied law at Lockport and at the Albany law school, being graduated in 1862; practiced in Chicago from 1862 to 1868; in Lockport, New York, from 1868 to 1870; in Chicago again from 1873 to 1876; in the latter year he removed to Kenosha, and was, for a time, a member of the firm of Van Buskirk & Hayes, and after its dissolution practiced alone.

#### ORSON S. HEAD.

Orson S. Head was born at Paris, Oneida county, New York, October 9th, 1817. He spent his earlier years in agricultural pursuits, but he was still enabled to acquire a good academic education. He studied law at Utica under Horatio Seymour. In 1841 he removed to Wisconsin and settled at Kenosha, and was soon after admitted to the bar and commenced the practice of law, which he continued to pursue at Kenosha as long as he lived. Upon his academic education he built up a thorough knowledge of the fundamental principles of jurisprudence, and took rank as one of the ablest lawyers in the circuit in which he practiced. He was several times chosen prosecuting attorney for Kenosha county, and discharged the duties of the office to the entire satisfaction of the people, as he always did his professional duties in civil practice to the satisfaction of his clients. Mr. Head

had but little taste or ambition for political life; he, however, consented to serve one year in the state senate in 1851 to fill a vacancy. He died at Kenosha, February 19, 1875.

#### CHARLES H. LEE.

Charles H. Lee is a native of Racine. His father, Alanson H. Lee, a pioneer merchant of Racine, where he located in 1840, was a native of Connecticut, where his family had resided for nearly two centuries. He was a descendant of Elder Brewster of the Mayflower. The mother of Charles H. Lee, Permelia A. Gaylord, was a native of New York state.

The Racine high school, under the guidance of Principal McMynn, was in the early days of Wisconsin the leading educational institution of the state. There Charles H. Lee obtained his education. Determined to make the law his profession, he began its study in the office of C. W. Bennett, then of Racine, now of Salt Lake, and later in the office of Fuller & Dyer at Racine. After graduation from the Albany (New York) law school and admission to the bar, he returned to Racine and for two years acted as managing clerk for Fuller & Dyer. From 1871 to 1878 he was associated with John T. Fish. He then accepted the position of general counsel with the J. I. Case Threshing Machine Company. In 1887 he became a director and treasurer of the company. This connection continued until January, 1897, when Mr. Lee retired to enable himself to enjoy the fruits of his labor, by taking life easier. However, in 1897, he made a trip abroad for the company, visiting Russia, Roumania, Austro Hungary and Belgium. The object of this trip was to examine into the possibilities for the use of American threshers in those countries.

Politically, Mr. Lee is a democrat, but believing the democratic platform of 1896 antagonistic to the welfare of his country, he voted for McKinley. While in no sense a politician, he was elected district attorney in 1872 on the republican ticket. He was brought up as an Episcopalian, but is now an attendant of the Presbyterian church and is a member of the board of trustees. He was married in 1881 to

Emily A., daughter of James H. Kelley, of Racine. They have no children.

Mr. Lee is active in charitable enterprises, and in all movements formulated for the benefit of Racine and its citizens he takes a leading part. As a member of the board of trustees and treasurer of the Taylor orphan asylum, he has displayed the same high order of business ability he has shown in connection with the corporations with which he has from time to time become associated. He is president of the Racine public library and has labored zealously for its improvement. For the past ten years he has been trustee of the Baker estate, amounting to over a million dollars, and is also president of the Chicago Rubber Clothing Company, of Racine.

#### FREDERICK S. LOVELL.

Frederick S. Lovell was born at Rockingham, Windham county, Vermont, November 1, 1815. He received early and good educational advantages, and was graduated from Geneva college in August, 1835. He soon after entered upon the study of law at Charleston, Sullivan county, New Hampshire, in the office of Henry Hubbard, once governor of and senator for that state. He afterwards pursued his law studies with Judge S. K. Strong, in the state of New York. On being admitted to the bar he directed his steps to the then new territory of Wisconsin, and in September, 1837, settled at Kenosha—then called Southport—which continued to be his home for the remainder of his life. He at once opened a law office and entered upon the practice of his profession, which he continued to pursue uninterruptedly until he entered the army to aid in suppressing the rebellion.

Col. Lovell was possessed of fine native talents and brilliant genius, which, superadded to his excellent scholastic education and his thorough professional training, gave him high rank among the galaxy of able lawyers which graced the bar of Wisconsin during its existence as a territory.

He was not permitted to confine his abilities exclusively to the practice of his profession, but was eagerly summoned by his fellow-citizens



to the legislative halls. In 1846 he was elected a member of the council in the territorial legislature and continued to perform the duties of that office until the organization of the state government. He was a member of the convention which framed the first constitution. This convention consisted of one hundred and twenty-four members, of which only six were elected to the second convention held the next year. Colonel Lovell was one of these six. In 1856 he was elected a member of the assembly from the Kenosha district, and reëlected the next year, serving during the years 1857 and 1858. At the last session he was speaker and discharged the duties of that office in an able and dignified manner.

In 1857 he was appointed, in connection with David Taylor and S. J. Todd, as a commission to revise the statutes of the state. The result was the volume of revised statutes of 1858, which continued in force, except as amended or repealed, until the revision of 1878. The superintendency of the printing of this volume was entrusted to Col. Lovell.

In August, 1862, he was appointed lieutenant-colonel of the thirty-third regiment, Wisconsin infantry—J. B. Moore, colonel. The colonel being placed in command of a brigade, the command of the regiment devolved upon the lieutenant colonel soon after it entered upon active service. In January, 1865, Col. Lovell was transferred to the forty-sixth regiment, of which he was appointed colonel, which was mustered out September 27, 1865. After his regiment was discharged he returned to his home in Kenosha, where he remained in quiet and repose until his death, May 14th, 1878.

#### JAY FORREST LYON.

Jay Forrest Lyon is the junior member of the firm of J. F. Lyon & Son, practicing attorneys at Elkhorn, Walworth county, Wisconsin. He was born at Darien, Wisconsin, November 8th, A. D. 1862, and was educated in the schools of Walworth county. He was employed as stenographer in the general office of the Chicago, St. Paul, Minneapolis & Omaha railroad at St. Paul, Minn., from 1882 until 1886.

He graduated from the Boston university school of law, class of 1888, *summa cum laude*; was admitted to practice at the state bar examination in 1888, and at once formed a partnership with his father, J. F. Lyon, with whom he is still in practice.

Mr. Lyon is a republican in politics and has held village and city offices.

He was married June 30th, 1886, at St. Paul, Minn., to Carrie A. Bayard of that city, and is a member of the Baptist church.

### JOSEPH F. LYON.

The subject of this sketch, Joseph F. Lyon, of Elkhorn, Walworth county, Wisconsin, was born in Harford, Susquehanna county, Pennsylvania, April 23d, 1825, and is one of fifteen children. His father, Isaac Lyon, was born in Fitzwilliam, New Hampshire, July 4th, 1779; was the son of David Lyon, an Englishman. Isaac Lyon moved to Harford in 1822, where he settled and was engaged in the milling business until 1856, when he moved to Darien, Wisconsin, remaining there until 1863, when another move was made to Independence, Iowa, where he died five years later. His mother, Sally (Blodgett) Lyon, was born in Deerfield, Mass., August 4th, 1800, and died at Independence, Iowa, in 1874.

Joseph F. Lyon was educated in the common schools of his native town and later attended Franklin academy in the same town, where he was a schoolmate of Galusha A. Grow, present congressman at large from Pennsylvania. When nineteen years of age Mr. Lyon emigrated to the state of Illinois, walking the first one hundred miles, and coming around the lakes on a sail vessel, landed in Chicago in September, 1844. He then walked to Little Fort, now Waukegan, Ill., and soon after commenced clerking for his cousin, I. R. Lyon, who was engaged in the mercantile business at that place. He soon formed the acquaintance of Henry W. Blodgett, a distant relative of his, who settled there the same year, and who is now a retired United States district judge. He spent his leisure time in Judge Blodgett's office reading law. In 1850

he removed to Woodstock, Ill., where he was engaged in the mercantile business for about a year. In 1851 he sold out his business in Woodstock, went to New York city, where he was in business in a wholesale clothing house for three years, spending six months of each year traveling for the house in northern Illinois and Wisconsin.

In 1859 he went overland to California with an ox team, arriving at Carson City, Nevada, about the time of the discovery of the Comstock mine. He was offered three hundred feet (one share) of the mine for a yoke of oxen. He returned from California in the fall of 1860, in time to take part in the first Lincoln campaign; was admitted to the bar of the circuit court for Walworth county, Wisconsin, in 1865.

On his return from California he settled in Darien, Wisconsin, where he remained until 1875, when, upon being appointed clerk of the circuit court for Walworth county, he removed to Elkhorn. At the expiration of his term as clerk he opened a law office in Elkhorn and practiced alone until 1888, when his son, Jay F. Lyon, of whom a sketch appears elsewhere in this volume, went into partnership with him. The firm has since done quite an extensive law business.

As to his political views, he was a whig as long as that organization existed. As soon as the republican party was organized he became a member thereof, and has continued to adhere to the doctrines of that party up to the present time. He was chairman of the board of supervisors of the town of Darien ten years and of the county board of Walworth county for three years; was a member of the general assembly for the year 1868; has been justice of the peace for thirty years or more, and court commissioner for Walworth county since 1885.

Mr. Lyon was married at Beloit, Wisconsin, July 26th, 1854, to Arimathea Jones, of Darien, Wisconsin, by whom he had three children—Arie May, Vernetta M., and Jay F. Mrs. Lyon died in 1872.

December 10th, 1873, Mr. Lyon was again married, at Springfield, Wisconsin, to Miss Amelia L. Dodge, who is the second cousin of Judge Blodgett. Mr. Lyon is domestic in his tastes and of quiet temperament. In his religious views he is a Congregationalist, but not very active in his religious duties.



He joined the Masons in 1851; has taken nine degrees. He was senior warden in 1855 and master in 1862.

#### PETER BERING NELSON.

Mr. Nelson was born in Schleswig, Germany, on the 16th of April, 1869, and is of Danish origin. His mother died when he was a year old and soon afterward his father, H. P. Nelson, a carpenter by trade, came direct to Wisconsin. In the public schools of Racine the boy obtained his primary education and by dint of persistent application advanced to the point where he was qualified to enter the law school of the University of Wisconsin.

Circumstances rendered it impossible for Mr. Nelson to enjoy more than one year's instruction at the university law department. He prosecuted his studies, however, under Congressman H. A. Cooper, of Racine, and in 1891 passed the required examination for entrance to the profession before the state board of examiners sitting at Milwaukee. He at once opened an office in Racine, associating himself with Mr. Cooper, his former preceptor, and as a member of the firm now known as Cooper, Simmons, Nelson & Walker, he has acquitted himself with honor in many cases of local importance.

Mr. Nelson was also elected district attorney by the republicans in 1894 and reëlected in 1896. Since 1890 he has held the position of Danish vice consul for the state of Wisconsin. As director in the Commercial savings bank and president of the Racine Refrigerator company his marked aptitude is brought into play. He is, further, identified with the Masons, the Knights of Pythias and the Elks.

#### HORACE T. SANDERS.

Horace T. Sanders was born in Sheldon, Genesee county, New York, May 1, 1820; he received a collegiate education and a thorough training preparatory to becoming a lawyer. He entered upon the practice of the law in Racine, Wisconsin, May, 1842. He was prosecuting attorney for many years in Racine county; was elected, in 1847, a

member of the second constitutional convention, and served in that body as a member of the committee on general provisions. He took a prominent part in the general debates and proceedings of the body and rendered very useful and valuable services. In 1853 he was a member of the assembly and occupied the position of chairman of the managers on behalf of that body on the trial of Judge Hubbell before the senate as a court of impeachment. He discharged the responsible duties of that position with great ability.

In 1862 he became colonel of the nineteenth Wisconsin infantry and was assigned to the eighteenth army corps; he acted as provost judge of Norfolk, Virginia, and attained the rank of brigadier general by brevet. His military service continued until the war closed, after which his health gradually failed; his death occurred October 6, 1865.

"He was a man of genius, great brilliancy of intellect, and fine analytical powers, all of which, combined with a finished education, gave him, justly, the character which he sustained, of being in the foremost rank of the profession in the state."

### JAMES SIMMONS.

The labors of Wisconsin lawyers have been much lightened by the skill and patient industry of James Simmons, of Lake Geneva, Wisconsin. From time to time since 1868 he has prepared and caused to be published digests of the reports of the supreme court of this state. In the main his work has been satisfactory. In so far as it has not been entirely so, the fault is less his than it is chargeable to the conditions under which he has wrought. The necessity of furnishing books as cheaply as possible has resulted in the publication of more supplements than would be desirable under other circumstances, and prevented the consolidation and revision of volumes as frequently as convenience has demanded. Mr. Simmons has done like work for other reports, as is mentioned in another chapter. He has also prepared articles for a series of books much in use a few years ago—Wait's Actions and Defenses—to the extent of about half a volume.

Mr. Simmons' father, John, was a native of Ashford, Connecticut, a graduate of Rhode Island college (now Brown university) and a lawyer by profession. His mother was Laura Bell. Both were descendants of revolutionary soldiers. He was born at Middlebury, Vermont, and was graduated at the age of twenty from Middlebury college. Soon afterward he began the study of law; but before completing it removed to the west, reaching Geneva, Wisconsin, in 1843, where he qualified for admission to the bar under the direction of C. M. Baker; he was admitted in October, 1843. He practiced at Geneva for a time, but failing health compelled him to seek other employment, and he engaged in engineering and clerking. In 1848-9 he served as clerk for the revisers of the statutes of 1849. After entering upon the practice of his profession a second time he was obliged to again abandon it; for six or seven years he was engaged in merchandising. In 1857 he became a partner of John T. Wentworth; in 1860 was elected clerk of the Walworth county circuit court, a position he held for ten years.

In 1870 Mr. Simmons caused to be published a history of Geneva, written by him. This he has recently revised, and it now appears under the title "Annals of Lake Geneva."

In 1848 he was married to Miss Katherine Colter, with whom he lived until her death in 1895. Surviving her are three children—John B., a lawyer of Racine; James, a professor in Iowa college, and Mary E., a professor in the Cedar Falls normal school.

### JOHN B. SIMMONS.

John B. Simmons, member of the well known firm of Cooper, Simmons, Nelson & Walker, is a native of McHenry county, Illinois, being born on the 26th of October, 1851. His parents, James and Catherine (McCotter) Simmons, were natives of Vermont. The elder Simmons is perhaps better known as an author than as a practicing attorney. He compiled several volumes of New York Digest since coming to Wisconsin in 1844. At that time he located at Lake Geneva and in 1849 was clerk and assistant to the board of revision of the Wisconsin state



statutes, and is widely known throughout the state as the author of Simmons' Digest of Wisconsin Reports. In 1850 he removed to McHenry county, Illinois, where, as stated, was born his son, John B., the subject of this sketch. In 1855 he returned to Lake Geneva, where the boy received his early education. The family afterward removed to Elkhorn, Walworth county, where the son commenced the study of his profession in his father's office.

In February, 1873, the former (John B. Simmons) was admitted to practice at Elkhorn, but immediately removed to Lake Geneva and opened an office alone. In this prosperous and intelligent community he continued to reside, as a prominent citizen and attorney, for a full quarter of a century. When the village was incorporated as a city in 1885 Mr. Simmons was elected its first mayor, and for many years he served as city attorney. In 1886 he formed a partnership with H. A. Cooper and P. B. Nelson, of Racine, conducting a branch office at Lake Geneva, and this arrangement continued until February, 1898, when he removed to the former city. At present he is, therefore, a member of the firm of Cooper, Simmons, Nelson & Walker, one of the strongest combinations of legal and business talent in southern Wisconsin.

Mr. Simmons' long career has been one of steady advancement and prosperity, his practice often taking him into the higher courts. One of the most important cases with which he has been identified is that of *Lyon vs. Fairbank* (79 Wisconsin), in which an attempt was made to enter as public lands a portion of a lot in possession of N. K. Fairbank. Suit was brought for \$100,000 for dispossessing plaintiff and demolishing the building he had started to erect on the premises. He was also connected with the case of the State *ex rel. Janes vs. Nelson*, being an attempt to oust defendant from the office of district attorney of Racine county upon the ground that he was holding the position of Danish vice consul at the same time that he was an incumbent of the county position.

In politics Mr. Simmons is a republican and has been a faithful worker for his party, without being a narrow partisan.

He was married at Lake Geneva, in 1876, to Miss Sarah B. Sturges. They have two children—John E. and Katherine.

#### MARSHALL M. STRONG.

Marshall Mason Strong was born at Amherst, Massachusetts, September 3, 1813; he received an academic education in his native town and graduated from Union college, after which he studied law and was admitted to the bar in Troy, New York. In May, 1836, he came to Wisconsin, locating at Racine, where his residence continued to be; he was the first prosecuting attorney of Racine county. In 1838 he was elected a member of the territorial council for four years; after attending the sessions of November, 1838, and January, 1839, he resigned; in 1843 he was elected to fill a vacancy of three years; was again elected in 1846 and resigned in 1847. In 1839 he was one of the committee to prepare a bill revising the statutes. In 1846 he was chosen a member of the convention that framed the first constitution; he served in that body as chairman of the committee on constitution and organization of the legislature and as a member of the committee on the organization and officers of counties and towns. "He took a very prominent part in all the labors and debates of the convention; but, in the end, so widely differed from the majority that he resigned before the close of the session, and was very active in his efforts to defeat the constitution when submitted to popular vote—indeed, may be said to have been the chief cause of its final rejection at the polls." In 1849 Mr. Strong was a member of the assembly and took an important part in the enactment of the revised statutes. This was his last appearance in public life. He continued in the practice of his profession until his health failed, and died March 9, 1864.

Moses M. Strong has written of Marshall M. Strong that the latter's reputation and standing as a lawyer soon "after 1839 became coextensive with the territory, and he ranked as the professional peer of any and all of his contemporaries. Perhaps the most remarkable trait of his character as a lawyer was his extreme imperturbability. Nothing could disturb him, nothing excite him. Always self-possessed, ever

equipoised, he was at all times ready to take any proper advantage of the mistakes of his adversaries. While he possessed great power of argument, it was the power of captivating, unanswerable logic and analytical deduction, and not the force of declamation or oratory. In the early years of the territory its legislative assembly presented a field for the display of argumentative abilities which, outside the walls of the capitol, served to establish the status of its members. The opportunities thus existing, although not used with any such design, had the effect of securing for Mr. Strong the reputation of a forensic debater of the highest order of intellect and power."

It is further said that Mr. Strong's general reading, aside from his profession, was extensive and varied. His love of literature and science prompted him to spend time and money for the establishment of Racine college and the erection of the college buildings, being always forward in such public or private enterprises as the public good seemed to require. He was a man of strong will and great firmness of purpose, yet seeking less his own advantage than what he conceived to be for the public good. During the civil war he was an unconditional supporter of the government, using his means, employing his pen and lifting his voice, while strength lasted, to aid the government.

In his intercourse with his fellow-men he was courteous and gentlemanly. Toward his professional brethren he was unassuming, and ever ready to advise and assist the younger portion, who placed unlimited confidence in his judgment and rectitude. Dignity characterized his bearing in court, as elsewhere, and his uprightness, fairness and candor in trying causes gave him as much influence with the court and jury as a man ought to have; but that influence was ever used to promote justice and never abused. No person had just cause to complain that he ever endeavored to obtain an unfair advantage, and yet his sagacity and watchfulness were an effectual guard and protection to his clients' interests. His exalted views of the nature and duties of his profession were such that he despised the tricks and chicanery resorted to by some, and always used his influence to effect a settlement of difficulties between litigants rather than add fuel to the flame. He had a quick ap-



prehension, retentive memory, a discernment remarkably active and reasoning faculties eminently vigorous. His philosophical mind, in originality and profundity of thought, was equaled by few. Had he occasion to investigate any subject, he was persevering in research and thorough in study. In conversation he was uncommonly instructive. In private life he was a genial companion—always tender and compassionate to the poor and always ready to relieve them—strictly temperate in his habits and entirely free from the vices into which mortals but too often are led. In short, truth, justice and gentleness, than which nothing can be more sacred and pure, mingled in his every act and characterized the man.

#### ISAAC W. WEBSTER.

Isaac W. Webster was a native of New Hampshire, born in 1819. He was well educated, and studied law with Benjamin F. Butler at Lowell, Mass. In 1848 he removed to Wisconsin and settled at Kenosha, where he continued afterwards to reside. There he commenced the practice of his profession and continued it until his death. He was a lawyer of more than ordinary ability, and his inborn integrity and honesty were such prominent traits of his character that he commanded the unbounded confidence of the community. He filled the office of postmaster and of district attorney of the county, and was three times chosen mayor of the city. In 1869 he was elected judge of the county court for four years, and in 1873 was reëlected for a like term. Judge Webster took much interest in the political questions of the day, although never holding any civil office except such as were intimately allied to his profession. He was identified with the press, and for several years edited the Kenosha Union with great ability. He was a man of genial manners and popular address, and his death, which occurred August 4, 1875, was a loss to the whole community.

#### SAMUEL A. WHITE.

Samuel A. White was born in Franklin, Delaware county, New York, August 10, 1823; was graduated from Hamilton college in 1841;

settled in Port Washington, Ozaukee county, Wisconsin, in 1845; appointed postmaster in 1853; served in the assembly in 1857; was chosen county judge in 1861; in 1864-65 was assistant bank comptroller. About this time he became a resident of Whitewater, was a member of the board of regents of normal schools from 1865 until 1870, and in 1871 and 1872 was a member of assembly from Walworth county. His death occurred at Whitewater, March 4, 1878.

## CHAPTER XIII.

### THE SECOND CIRCUIT, ITS JUDGES AND LAWYERS.

Originally the second judicial circuit was composed of the counties of Milwaukee, Waukesha, Jefferson and Dane. The growth of Milwaukee has had such an effect upon the business of the courts that since 1882 the county of Milwaukee has alone constituted the second circuit. In 1887 the superior court of Milwaukee county was established; and in 1891 a law was enacted providing for the election of a second judge of that court. These measures being insufficient to afford all the relief necessary an amendment to the constitution was adopted in 1897 providing that an additional circuit judge may be elected for that circuit. The legislation had pursuant to this amendment has not taken effect at the time of this writing, so that but one circuit court is in existence in the second circuit.

That circuit has had seven judges in all—the first being Levi Hubbell, and the others, in order, A. W. Randall, Arthur MacArthur, Jason Downer, D. W. Small, Charles A. Hamilton and D. H. Johnson.

The bar of the old second circuit was a very strong one, including as it did Madison, Milwaukee, Waukesha and Watertown. The Milwaukee bar has long had a high reputation for ability. The names of Arnold, Carpenter, Finch, Lynde, Miller, Ryan and others of the early days would honor the bar of any city. The bar of later times, too, is worthy the metropolis of Wisconsin, and compares favorably with that of the early days.

Sketches of the lives of Judges Hubbell and Downer appear in other chapters. Sketches of the lives of the other judges of the second circuit follow.



**THE BENCH.**

## ALEXANDER W. RANDALL.

Alexander William Randall occupied a seat upon the bench but a few months, and that by executive appointment. On the first of August, 1856, he was appointed by Governor Bashford judge of the second circuit, in place of Levi Hubbell, resigned. His oath of office was filed September 10, 1856, and he continued to perform his judicial duties until the next April.

As brief as was his term, the manner in which his duties were performed won general approbation, and he would have been elected to the office by the people but for the large political majority and the personal popularity of the candidate arrayed against him.

A. W. Randall was born in Ames, Montgomery county, New York, October 31, 1819. He enjoyed a very thorough and complete academic education, and having adopted the profession of the law as his life pursuit, was a diligent student of its elementary principles, and became well qualified for its practice. At about the time he attained his majority, in 1840, he settled in Waukesha, then called Prairieville, where he commenced the practice of law, which he continued until it was interrupted by the necessity of devoting his time to the important civil offices which he was called upon to fill. While in practice he took rank with the ablest of the able lawyers in the metropolitan circuit, and if civil offices had not diverted him from his profession he would doubtless have been a most distinguished ornament to the bar.

Soon after he commenced practice he was appointed postmaster, which office he held for several years. He was elected, in 1846, to the convention which framed the first constitution for the state. His chief distinction, as a member of that body, was the introduction and successful advocacy of the resolution for the separate submission to a vote of the people of the question of colored suffrage. In this he was antagonized by a very large majority of the democratic party of the state,

with which he had, before that time, been identified. Thereafter, for several years, he devoted himself exclusively to the practice of law and took no prominent part in politics, being regarded as too much of an abolitionist to be popular with either party.

In 1854, by an extraordinary local vote of the incipient republican party, in combination with some other elements, he was elected a member of the assembly for the year 1855. He now entered upon a political career, which, for nearly a quarter of a century, knew no political reverses, and during a large part of which he was wafted on the waves of political success, and filled many of the highest official positions in the state and nation.

In 1855 Mr. Randall was made the candidate of the new republican party for attorney general, but it was not yet sufficiently crystallized to command success, and all its candidates were defeated, except the candidate for governor, who obtained the office by a resort to the supreme court. His judicial services in 1856-57 have been noticed. In 1857 and again in 1859 he was the candidate of the republican party for governor, and upon both occasions was elected. For four years, until the first of January, 1862, he was the head of the executive branch of the state government. During the last year of his service, the first of the rebellion, his duties were new and highly responsible. The executive office became the focus and headquarters of military activity. He proved equal to the occasion. As an organizer he had wondrous talent and as an administrative officer he was unsurpassed.

At the close of his term Governor Randall had a strong desire for service in the army. On visiting Washington, however, President Lincoln induced him to forego his purpose and accept the appointment of minister to Rome. He went to the "eternal city," but such a life had no charms for him; he could not endure the sense of banishment when every arm was needed to strike a blow for his country. He resigned, in 1863, and on his return sought a military position. The President, however, again dissuaded him and prevailed upon him to accept the office of assistant postmaster general, which office he filled until 1865, when President Johnson promoted him to the head of the department,

from which he retired at the close of the presidential term. He was the first citizen of Wisconsin to hold a cabinet office.

In 1869 he resumed the practice of the law at Elmira, New York, and continued to practice there until his death, August 26, 1872.

### ARTHUR MACARTHUR.

The ancestors of Mr. MacArthur have been famous in Scotch romance and history as the MacArthurs of Loch Katrine and Loch Arve. It is said that an island in Loch Katrine was consecrated as the burying place of the MacArthurs and that there the tombstones marking the graves of those who bore that name and who were in the crusades can be found by removing the earth to the depth of a foot or two. Four of his relatives were participants in the battle of Culloden, two of whom died on the field.

The subject of this sketch was born in Glasgow, Scotland, January 26, 1815, and came to this country with his parents when a child. He was educated at Uxbridge and Amherst academies, in Massachusetts, and Wesleyan university, in Connecticut; his study of the law was prosecuted in New York, and his admission to the bar occurred in 1841. He first practiced in Springfield, Massachusetts, and in 1843 became public administrator of Hampden county and also judge advocate of the western military district of Massachusetts. He returned to New York city in 1845 and practiced law there until 1849, when he removed to Wisconsin, locating in Milwaukee. In 1851 he was elected city attorney and held that office one term. In 1855 he was elected lieutenant governor on the democratic ticket. That election resulted in a contest between the candidates for governor, with the result that Bashford, the republican candidate, was seated by the supreme court, though Barstow held the certificate of election. The title of Mr. MacArthur to the lieutenant governorship was not questioned. He, however, became involved in the controversy. Prior to the final judicial determination of the contest Barstow resigned, and the lieutenant governor, by virtue of the constitution, became governor. MacArthur not only took the office, but resolved to keep it; his contention was that the right to it



was not a question for the courts, but that the certificate of the state canvassing board was final; he, being undeniably lieutenant governor, must necessarily, because of the resignation of the governor, succeed to that office. He held the office four days. One of his first official acts was to order that the arms and ammunition stored in the executive office by Barstow be removed from the capitol. After the supreme court determined that Bashford was elected and that the right to the office was a question for judicial determination, Bashford and his counsel went to the executive office and demanded of MacArthur that he surrender the possession of it. "Am I to understand," said he, "that if I do not surrender the office you will resort to force?" Timothy O. Howe, Bashford's counsel, said: "My advice is that Mr. Bashford hang his coat upon a nail and proceed to the performance of his gubernatorial duties. I would not, of course, advise him to lay violent hands upon so distinguished a gentleman as Governor MacArthur." After further talk Mr. Bashford said that unless Mr. MacArthur retired he would "probably be compelled to expel him by force," whereupon MacArthur withdrew and resumed his duties as president of the senate.

In 1857 Mr. MacArthur was elected judge of the second circuit to fill the vacancy caused by the resignation of Judge Hubbell; in 1863 he was re-elected. In 1867 he was a commissioner on the part of the United States to the Paris exposition. In 1869 he resigned the circuit judgeship, after thirteen years' service. On his retirement the bar of Milwaukee paid him the compliment of calling a meeting to express appreciation for his services, and made, by William Pitt Lynde, a presentation to him of a valuable set of law books.

In 1870 President Grant appointed Judge MacArthur an associate justice of the supreme court of the District of Columbia, which position he held for more than seventeen years, resigning in 1888, at the age of seventy-three. While in the discharge of his judicial duties he reported three volumes of the decisions of the court of which he was a member and aided in reporting a fourth volume.

During his later years Judge MacArthur devoted considerable attention to literature, having written "The biography of the English

language, with notices of authors, ancient and modern;" "The historical study of Mary Stuart," an attempted vindication of her memory and character; "Essays and papers on miscellaneous topics;" a "History of Lady Jane Grey;" a volume of "Lectures on the law, with special reference to the legal rules that regulate business in commerce, real estate, mortgages, trust deeds, and the property rights of married women;" these were delivered before a business college of Washington.

Notwithstanding his official duties and other engagements Judge MacArthur was actively interested in benevolent enterprises, having served as president of the society for the prevention of cruelty to animals and children; he was also president of the board of regents of the proposed national university. During his residence in Washington he was a social favorite, much given to dining out, and always ready in social converse. His death occurred at Atlantic City, New Jersey, August 26, 1896.

#### DAVID W. SMALL.

Judge Small came to Wisconsin from Pennsylvania, his native state. He was born at Frankfort, Philadelphia county, December 18, 1827. His early boyhood days were spent on a farm, the winter months being given to attendance on the common schools; he also attended the Moravian college at Nazareth for two years. At the age of eighteen he began teaching school, and at the same time read law with George Lear of Doylestown, Bucks county. After his admission to the bar, in April, 1850, he started for the west, and located at Oconomowoc, Wisconsin, where he has since resided. In order to make up the deficiency between his income as a lawyer and his needs he engaged in surveying for a time; but the necessity for so doing was not long continued. In 1862 he was nominated by the democrats as a candidate for district attorney, and was twice re-elected. In 1869 he was elected judge of the second circuit by 7,617 votes to 5,398 for Alpha C. May; in 1875 he was reëlected, receiving 9,580 votes to 7,164 for Joshua Stark. He failed of a second re-election in 1881, the vote being 10,089 in his favor to 11,504 in favor of Charles A. Hamilton.







Me K. & Co. Publishers

*D. K. Johnson*



## CHARLES A. HAMILTON.

Judge Hamilton is a grandson of the great Alexander Hamilton. He was born in Saratoga Springs, New York, July 23, 1826; educated, generally and professionally, in New York city, and was there admitted to the bar September 2, 1847. In 1851 he located in Milwaukee, and became a partner of the late J. E. Arnold; in 1858 he became a member of the firm of Emmons, Van Dyke & Hamilton.

In August, 1861, Mr. Hamilton entered the Seventh Wisconsin regiment as major, which left the state for Washington in September and became a part of the brigade which became known as the iron brigade; he subsequently became lieutenant-colonel; in 1862 he participated in General Pope's Virginia campaign, and commanded his regiment in the battle of Gainesville, where he was severely wounded. Before fully recovering he rejoined his regiment and took part in the engagements of the army commanded by General Burnside, including the battle of Fredericksburg. As a result of the wound received at Gainesville, Colonel Hamilton became unfitted for military duty and was mustered out in March, 1863, as permanently disabled. Returning to Milwaukee, he resumed business relations with the firm last referred to. After its dissolution he practiced alone until his election as circuit judge, which occurred in April, 1881, his term of office beginning in January following and continuing for six years. Besides serving in that capacity he was for some years a member of the board of regents of the state university.

Judge Hamilton's career upon the circuit bench met the expectations of his friends, and was creditable to him and the state. It is said of him by Joshua Stark, in chapter 31 of the History of Milwaukee County, "that he was a cultivated gentleman, a sound lawyer and an upright and conscientious judge. At the end of his term he retired in feeble health."

## DANIEL H. JOHNSON.

Daniel H. Johnson, the present judge of the second judicial circuit, is one of the most brilliant as well as solidly judicial characters who have

been identified with the bench and bar of Wisconsin. While making a broad reputation as a learned member of his profession, he has at the same time so stored his mind with the best literature of the world that his conversation and his writings remind one of the days when the choice minds of England were given over to high flights of fancy and philosophy, rather than to the turmoil of business and politics. Although, in the latter days, it has often been said that "conversation is a lost art," if this saying is to be accepted, Judge Johnson is certainly one exception to its general truth.

Judge Johnson is a native of Kingston, Ontario, where, or near which city, he was born on July 27, 1825. His father was a seasoned soldier under Wellington, and came to America as a British sergeant, serving in the war of 1812. At the conclusion of hostilities he obtained a homestead near Prescott, but afterward removed to a locality near Kingston and died about two years after the birth of our subject. Judge Johnson's mother was the daughter of a brave revolutionary soldier; so that, logically, he comes of good fighting blood. These facts, also, may account for his aggressive spirit, joined to one of charitable compromise.

Judge Johnson's early years were passed with an aunt near Kemptville, not far distant from his birthplace, where he obtained his first schooling. After teaching for a time, in 1844 (then but nineteen years of age) he turned his face to the new and invigorating west, taking a course of instruction at the Rock River seminary, Mount Morris, Illinois. In the summer of 1845 he found himself in the stirring region of the lead mines, of which Galena was the great center. Working as a miner and teaching as an educated gentleman were avocations gracefully undertaken by the adaptable young man, and in the latter capacity he removed to Prairie du Chien in 1848. Here he commenced the study of law, and his persistent application, retentive memory and finely trained mind, incited by a high ambition directed toward a definite object, bore such fruits that in 1849 he underwent a successful examination for admission to the bar.

Mr. Johnson at once commenced practice in Prairie du Chien and



thus continued until 1854, when he entered a field in which he might have made as shining a mark as in that of the law; he purchased an interest in the *Prairie du Chien Courier*, and afterward became its sole proprietor, as well as editor. As a member of the journalistic profession for only two years he gained laurels of which an editor of many years' standing might justly be proud, the force and purity of his diction, as well as the strength of his character, earning him many friends and admirers. In 1856, however, he decided to return to the profession for which he had been specially trained, forming in that year a partnership with W. R. Bullock, a nephew of vice president Breckenridge. The firm of Johnson & Bullock, thus established, remained unchanged until the breaking out of the civil war, when the junior partner joined the confederacy, and Judge Johnson, as a whig and a republican, united with the forces of the north.

In 1860 Judge Johnson had been elected to the legislature, representing the counties of Crawford and Bad Ax (now Vernon), and although an untried member, he was appointed to the position of chairman of the committee on ways and means, as well as being a member of the committee on education. During the fall of 1861 he again entered public life as assistant to attorney general Howe, discharging the duties of that position until May, 1862, when he was called to the south as a clerk in the paymaster's department. In November of that year he returned to Wisconsin, settling with his family in Milwaukee.

Since residing in the Cream City he has been associated, at different times, with the firms of Wyman & Johnson; Austin, Pereles & Johnson; Rogers & Johnson; Markham & Johnson; Johnson & Rietbrock (1871); and Johnson, Rietbrock & Halsey, the third member of the last named firm being admitted in 1876.

In January, 1888, Mr. Johnson was elected to the judgeship of the circuit court over N. S. Murphey, the labor candidate. He was unanimously re-elected in 1893, his present term expiring on December 31, 1899.

Since becoming a resident of Milwaukee he has been a leader in its

public as well as legal affairs. He was a member of the convention called in 1867 to frame a new city charter, being chosen chairman of the committee on revision; in 1868 and 1869 he was again elected to the legislature, acting during his first term as chairman of the committee on education, and, during his second, chairman of the judiciary committee. In 1872 his force as a thinker and his ability as a public speaker were recognized in a broader field by his selection as a delegate to the national convention which met in Cincinnati and placed Horace Greeley in nomination for the presidency. Since the split in the republican party, occasioned by the so-called Greeley movement, Judge Johnson has acted with the democracy, although his political views now, as then, are liberal and elastic. In 1878 he was elected city attorney for two years, and ten years later, as stated, was elevated to the bench.

As judge of the second Wisconsin circuit for the past decade he has become known far and wide for the clearness and breadth of his decisions, and the almost classic language in which they are couched. It is not too much to say, in fact, that there never was an occupant of this bench of more breadth of judicial and personal character or greater reserved force.

It may be added that the court over which Judge Johnson presides has four times a year a calendar of between four hundred and five hundred cases, and a weekly motion calendar of from thirty to fifty motions.

In literary circles his name has a national reputation. As a writer of short stories he is pre-eminent, his ingenuity, his freshness and lucidity of language and his grace of general treatment being qualities of especial notice. He has contributed to the exclusive columns of the *Atlantic Monthly* such stories as "Our Paris Letter," "Broke Jail," and general newspaper and periodical literature have for many years been enriched by his pen.

#### THE BAR.

#### JONATHAN E. ARNOLD.

Mr. Arnold was born at Woonsocket, Rhode Island, February 16, 1814; graduated from Brown university; read law in an office and took



J. C. Arnold





lectures at Harvard for one year. He removed to Wisconsin and settled at Milwaukee in September, 1836, where he practiced his profession and resided until his death. In 1840 he was elected a member of the territorial council, served during one session and resigned; he served as district attorney of Milwaukee county several years; was an unsuccessful candidate against General Dodge for Congress in 1841, and was again a candidate for representative in 1860, but was beaten by John F. Potter, a republican.

In politics Mr. Arnold was a whig so long as that organization was intact; after its disruption he acted with the democratic party, though during the civil war he made a number of speeches in favor of the maintenance of the Union. His death, caused by heart disease, occurred in his office, June 2, 1869.

Mr. Arnold was of counsel for Judge Hubbell in the impeachment proceedings against him in 1853, and acquitted himself with great credit. Another of his important cases was the Bashford-Barstow controversy in the supreme court, involving the right to the governorship; associated with him in the case were Harlow S. Orton and Matt. H. Carpenter; on the other side (representing Mr. Bashford) were Timothy O. Howe, E. G. Ryan, J. H. Knowlton and Alexander W. Randall. The manner in which Mr. Arnold performed the duties of district attorney gave him a large reputation for his knowledge of criminal law; and subsequently, it has been said, a most important part of his practice was in defense of persons accused of crime, and often where his clients were in the most imminent peril. In these cases he acquired his greatest distinction.

In personal appearance his distinguishing characteristics were polished manners, mild, courteous and dignified demeanor, respect and kindly feeling toward others; an air of conscious strength entirely unmixed with anything like self-conceit or arrogance; an erect and well-formed figure, which in early years gave him an appearance of manly beauty; an intellectual face, high and fully exposed forehead, dark, lustrous eyes, with ever-varying expression, with firmness and energy indicated in every feature and in every movement.

Moses M. Strong, the author of the preceding paragraph, has written thus: "For nearly three-and-thirty years Jonathan E. Arnold was a leader of the Wisconsin bar. For all that time he discharged a large measure of its duties, wore a large share of its honors; a prominent figure among the distinguished lawyers of the territory and state. His eloquent voice has filled, his professional labors have adorned, many of the court rooms of the state. For over a quarter of a century he has filled a large place in the public view; known of all men as a lawyer of fine talents, thorough training, untiring energy, singular address, bold, yet prudent, of remarkable force always, tenderly pathetic at times; of rare eloquence whenever the occasion inspired it. Eminent as he was for professional ability, he was perhaps even more distinguished for his professional character. He was every inch a lawyer, thoroughly professional in mind and habit. He was remarkable for his professional bearing, a living model of professional esprit de corps. He was no wayward genius, occasionally exciting wonder or admiration. He was a man of disciplined and practiced talent, always efficient, bringing to every cause the just measure of ability it needed or admitted. He was singularly self-reliant; his powers were always in singular self-command. He never forgot himself or the occasion. Always great, he was greatest in jury trials. He was a study of professional dignity. Nothing distracted him, nothing disturbed him. He never wasted a word or a gesture. His conduct of a cause seemed like a great piece of accomplished acting, and at times he may have seemed artificial, but his efforts were always earnest and thorough. Weighty in thought, chaste in language, graceful in manner, he habitually illustrated his own conceptions of professional carriage."

It is said of Mr. Arnold in Reed's Bench and Bar that "his was a strong character, and his leading characteristics seem to have been that he was gentle as a child and gentlemanly in all his daily deportment toward court and bar. He told the court nothing he did not believe in regard to the law. He commenced his argument slow and dull, fired up to the eloquence of the best lawyers of New England's best days, and in a large majority of cases carried court and jury with him. He never



smiled or joked while guarding his client's interests in court, but, like Rufus Choate, acted as though a religious duty was upon him, and the interests in his hands were too sacred for him to forget for a moment, even to look to the right or left. He never permitted a client to go to law with him for advocate, unless he believed and had good faith that the law was in favor of his client. He was one of the most modest of men. He was honest in his charges against clients, often telling them that he had done them no good, and charging accordingly. He treated all men well, the humblest as well as the richest. He seemed to know all the law intuitively and believed in equity, and was great and grand in intellect and the richness and accomplishments of legal education and legal lore. He feared no man and bullied no man."

Mr. Arnold's reputation as a lawyer was much extended by his management of two murder cases, which gave him opportunities to demonstrate his power as a criminal lawyer and show the possession of those peculiar gifts for which he afterwards won such renown. One of these was the Ross-Radcliffe trial in 1851. The case was apparently one of cold-blooded murder for the sole purpose of robbery. One David Ross, whose wife had died, turned all his possessions into money, preparatory to leaving Milwaukee. This sum of several hundred dollars he concealed about his person in a belt. During the Sabbath day he was often seen in company with one Radcliffe, a man of little character, and in the evening was found in the street in a dying condition. The money was gone, while the wounds upon his person showed that he had been attacked and beaten into insensibility. Many points of evidence pointed to Radcliffe, while the prosecutor, A. R. R. Butler, assisted by the skill of E. G. Ryan, wove about him a network of proof from which it seemed there was no possibility of escape. Mr. Arnold appeared for the defense, assisted by A. D. Smith. The contest waged by these giants was one of the most thrilling and stubborn ever seen in the state up to that time, fifteen days passing before the final issue was taken from the hands of counsel and given into that of the jury. The result was less of a surprise to those who had watched the skill with which Mr. Arnold had directed his course toward those in the box than to the general public.

The verdict was one of acquittal. It was upon its announcement that Judge Hubbell, who sat upon the bench and was himself convinced that blood lay upon the hands of Radcliffe, was surprised out of his judicial calm and, fixing his eyes upon the foreman, asked, with surprise, "Is that your verdict?" "It is," was the answer. "Then may God have mercy on your souls!" said the judge.\*

In 1852 another case, of greater sensational interest, occurred, which gave an additional opportunity to Mr. Arnold to display his capacity as a criminal lawyer. October 14, as John M. W. Lace, a member of the Milwaukee fire department, stood on Wisconsin street, he was approached by Mary Anne Wheeler, who drew a pistol and shot him dead. The girl was arrested, admitted the shooting, and in defense declared that Lace had been the cause of her ruin. Mr. Arnold was engaged for the defense, and although he was assisted by William Abbey of Cleveland, Ohio, and W. H. Tucker of Sandusky, Ohio,—the state in which

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\*In ch. 32 of the History of Milwaukee County Joshua Stark says of this trial that it was conducted on both sides with extraordinary zeal and ability. The circumstances of the crime and the great ability of the counsel employed attracted universal attention. Public interest was intense. Crowds thronged the court house eager to hear. Mr. Ryan had been in the city but about three years and the occasion spurred him to extraordinary effort. Messrs. Arnold and Smith fully appreciated the intellectual power and great skill opposed to them, and the difficulties of their defense, and were alert and energetic to secure every possible advantage. The trial had lasted nearly two weeks when the testimony was closed. The desire of the people to hear the addresses of counsel to the jury was so great that Judge Hubbell adjourned the court to the largest public hall in the city for the "summing up," and here for two days the public listened with "bated breath" to the elaborate and eloquent pleas of the counsel. The scene was highly dramatic. The hall was equipped as a theater, and the main floor and gallery would seat about fifteen hundred persons. The court, judge, jury, prisoner, officers and attorneys occupied the stage, and the play went on. The facts and circumstances showing guilt were grouped and linked together on one side with masterly skill, and the counsel for the accused were defied to break the chain. On the other side, the uncertainty of circumstantial evidence and the danger of convicting the innocent were pressed with burning eloquence upon the hearts of the jury. Both Arnold and Smith were able and eloquent. Their impassioned appeals to the jury were successful, aided, perhaps, by the very vehemence and persistence of the prosecution. The jury acquitted the prisoner, to the surprise and indignation of the judge, whose comment on the verdict was: "May God have mercy on your consciences." One of the jury, William K. Wilson, felt the rebuke as a personal insult, and became, in 1863, the willing accuser of Judge Hubbell to the assembly of the state, when proceedings were lodged for his impeachment."

the parents of the girl resided—it was upon his shoulders that the main labor devolved, and it was due to his skill and management that she was acquitted. The only ground in which the defense could have any hope lay in a moral justification because of the relations of the two, and the wrong that had been done. But strong as this might possibly be as a matter of sentiment or even of justice, it constituted no defense in law. At that day the plea of “moral” or “emotional” insanity was a novelty in the west, and it may be questioned whether the books then in use recognized it.† If this be wrong, the grounds upon which the plea could be used were meager and the materials out of which insanity of that kind could be constructed were very slight. Mr. Arnold decided upon a bold stroke. His real defense, as set forth indirectly in every phase and turn of the trial, was the broad one that the girl had been justified in the murder, and that by the shedding of Lace’s blood alone could atonement be made for the outrage put upon her. To fasten this thought in the conscience of the jury and yet afford a legal reason for a verdict of acquittal, was the task he set himself to perform. In his opening address, in the examination of witnesses, in his powerful closing plea, and in all possible legitimate ways, from first to last, he kept this object in view with consummate skill, and drove his purpose home with power and

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†J. H. Kennedy is the author of the account of the two trials for murder given in the text, though the language is varied somewhat. He says that the defense in this case attracted world-wide attention, and was even cited as an example in the course of a debate in the English parliament. Vol. 6, Magazine of Western History, pages 174-176.

Mr. Stark, in the work referred to in the preceding note, says that Mr. Arnold’s defense was temporary or emotional insanity. There was little evidence in its support. Repeated offers were made by him to prove that the victim had, at some time previous to the homicide, ill-treated and grossly slandered the accused, but the evidence was rejected. Mr. Arnold’s object was gained, however, since his offers gave him the opportunity, allowed by the court, for the repeated recital in the hearing of the jury of the story of gross wrong and insult, in terms designed and well fitted to excite sympathy for the accused, and to arouse strong prejudice against her assumed traducer. This being effected, it was only necessary to invent a pretext for her acquittal. With wonderful ingenuity, Mr. Arnold framed and induced the court to give instructions so artfully drawn as to open the way for the verdict he desired, and then, with great skill and pathos, pictured to the jury the mental distress which, at the instant of the homicide, he maintained was madness.



vigor. The trial commenced May 16th, 1853, with Judge Howe presiding. In opening for the defense, Mr. Arnold made an earnest and eloquent speech. These sentences are significant: "I have always supposed, from what little I have known of myself, that I was a poor hand to work without some material; that I was a poor hand to set up a sham defense and seriously and earnestly to urge it upon a court or jury. I do not feel competent to do it. I have neither the ability nor the inclination, and if I did not believe in my heart and before my God that the defense which I shall undertake to establish here is genuine and is well founded, I would take my seat and permit this woman to go to your hands."

The following extracts from his closing argument may serve to show its tenor and power:

It has been supposed by some that the fear of death was implanted in the consciousness of man in order to restrain him from the exercise of that larger share of power with which he is endowed. But all other animals upon our globe have been created with limited capacities and limited spheres of action. Their power is present. It does not extend beyond themselves, and hence the fear of present bodily pain has been supposed to be sufficient to restrain them within their legitimate spheres. But for man, with a body framed for vigorous exertion in every clime, with a mind unlimited in capacities and unceasing in effort—for man, whose power extends not only to the present but through future generations, some stronger restraint has been necessary than the fear of present pain. It consists of the terrors of that unknown region to which we are all rapidly hastening. A well-spent life, the affections, the sorrows, the tears of those we love, may persuade us of our merit; the principles of proud philosophy may sustain, the hopes of divine religion may console us; but still nature will assert its dominion, and we instinctively shudder at the silence and the gloom of the grave. There sensuality, ambition, malice, revenge, all passion, is laid low in the dust. There the tenderest earthly ties are snapped asunder forever. There Alexander left his worlds unconquered and Cræsus parted with his gold. There Bacon forgot his learning and Newton descended from the skies. There friend is unlocked from the arm of friend, brother from the arm of brother. There the father takes the last look at the body of his cherished son. There the doting mother, day by day and night by night, moistens with her tears the clod that embraces her darling infant in its bosom. . . .

We say that the victim of seduction, with slander upon her good name, with her character robbed from her, with her hopes blasted, under disgrace, infamy, desertion, betrayal, bleeding at every pore of head and heart, in a sudden, overwhelming impulse of derangement, upon meeting her seducer, took his life and avenged her wrongs before God and man. There with her own right hand hath she gotten herself the victory! And Lace! Let no tears be shed over his grave. By his conduct, by his vices, by his crimes, he had excluded himself from the protection of the law and from the protection of all cultivated society; had shown himself to be a man no longer worthy of the confidence and the respect of men or the love of woman—and I say here for myself that it will be justified! It is justified in the judgment of the world; in the judgment of all men who have a heart beneath their breasts, who are men of honor or of courage, who reverence the female sex, who love the mother that bore them, and who love their wives, their sisters and their daughters. It is justified that her timely arm, which had clung around his neck in love, should itself be the instrument that in an instant should send his damned and coward soul—to heaven or hell!

The trial was concluded May 26, and resulted in a disagreement. The second trial began June 5, and resulted in a verdict of "not guilty, by reason of insanity." The Milwaukee Sentinel of the following day said: Mr. Arnold bore the brunt of the fight, and proved himself throughout a consummate tactician and most successful advocate. His whole plan of operations—the real attack made under a feigned issue—his admirable opening and summing-up in the first trial and the far-surpassing effort at the second trial, enhanced his reputation as one of the first criminal lawyers of the west. His closing effort in behalf of the prisoner on Saturday afternoon was compact, logical, well-arranged, earnest and at times most impassioned.

#### JAMES S. BROWN.

James S. Brown was born at Hampton, Maine, in February, 1824, and improved the educational advantages afforded him. At the age of sixteen he went to Cincinnati, entered an office, pursued the study of the law and was admitted to the bar before he attained his majority. He began practice in Milwaukee in 1844, and in 1845 was appointed prosecuting attorney of Milwaukee county; his discharge of the duties of

that office for several years was creditable to him and satisfactory to the public. Upon the formation of the state government he was chosen attorney general, and served as such until January, 1850. In 1861 he was elected mayor of Milwaukee, and in 1862 was chosen a member of the thirty-eighth Congress; he was defeated for re-election in 1864 by Halbert E. Paine, the republican candidate. His health failed in the later years of his life, and the end came April 16, 1878.

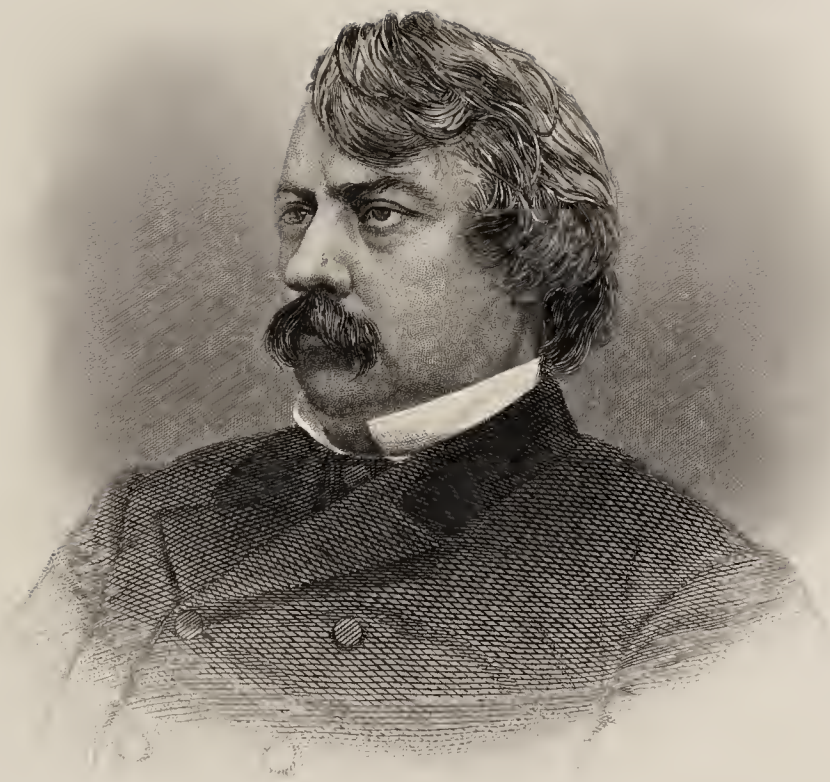
It was the opinion of the late Moses M. Strong that "Mr. Brown was far more than an ordinary lawyer," and that it was "within the truth to say that so long as he continued in active practice he had few equals in his profession within the limits of Wisconsin. His education, scholastic and legal, was excellent. He possessed a bright intellect and sparkling genius, and had great versatility of powers. As an advocate before a jury he was logical and persuasive. He convinced by his argument and persuaded by his eloquence, which oftentimes was of a high order. His cases were always well prepared, and he was always careful and painstaking in all his professional business. In the supreme court, in which he had an extensive practice, his briefs were always clear and comprehensive, and presented the points of the case and the arguments in support of them in a forcible and logical manner."

#### MATTHEW H. CARPENTER.

On the 22d of December, 1824, at Moretown, Washington county, Vermont, a son was born to the wife of an eminent lawyer and citizen of prominence, and the parents, as if the spirit of prophecy were upon them, named the child after the great English jurist, Matthew Hale Carpenter. When the boy had reached the age of eleven years his mother died, and Paul Dillingham, afterward governor of the state, having charged himself with his education, Matthew became a member of his family at Waterbury.

In 1843 John Mattocks, being then the representative to Congress from that district, procured for young Carpenter an appointment as cadet in the military academy at West Point. It opens a curious field for speculation to reflect what might have been his career if he had per-





*Walt. H. Carpenter*

W. H. MATTHEW H. CARPENTER.



severed in the profession thus chosen for him. He was a classmate in the academy of General Fitz John Porter and others who attained prominence in the war of the rebellion, and it is not inconceivable that he might have proved to have the making of a great captain in him; but it is not altogether easy to think of him as leading a fierce onset at Chickamauga or storming an angle of the entrenchments in the wilderness. At all events the possibility of that spectacle was denied us by a weakness of the eyes which made it necessary for him to resign his cadetship at the expiration of his second year.

Returning to Waterbury in the summer of 1845, he entered upon the study of the law in the office of Mr. Dillingham, and two years later was admitted to the bar at Montpelier. Soon after he removed to Boston and finished his studies in the office of Rufus Choate. It is known that he enjoyed in a peculiar degree the intimacy of Mr. Choate, and the formative influence of that incomparable lawyer upon his admiring disciple is by no means difficult to discern.

In the spring of 1848 Mr. Carpenter was admitted to practice by the supreme judicial court of Massachusetts, and the same year removed to Beloit, Wisconsin, where he opened an office. He was almost wholly destitute of means, and the beginning of his professional career was further embarrassed by a recurrence of the disease of his eyes, which became so serious as to make it necessary for him to go to New York for treatment. For over a year he was almost wholly blind, and it was two years, or thereabouts, before he could use his eyes to any practical extent.

In 1852 Mr. Carpenter was the candidate for district attorney of Rock county. The election was contested, and the case was taken to the supreme court, where it was decided in his favor. The case is a leading one in the reports, and Mr. Carpenter himself had occasion to cite it when he was arguing the cause of *Bashford vs. Barstow*. The appearance of Mr. Carpenter in this important cause, involving no less a question than the possession of the governorship of the state, is an evidence of the standing that he had attained when he had barely closed the third decade of his life. He was associated with eminent counsel,



but it seems to have been left to him to project, and mainly defend the principle upon which Governor Barstow resisted the writ of quo warranto filed in behalf of the contestant Bashford. His position was that the three branches of the state government are co-ordinate, and that it was not competent for the supreme court to pass upon the lawfulness of the incumbency of the executive office. The decision of the court was adverse, but Mr. Carpenter's argument will none the less impress the professional reader as ingenious and powerful.

Mr. Carpenter removed to Milwaukee in 1856. He was for a number of years engaged in the intricate and embarrassing litigation arising out of the construction and consolidation of certain railroads in Wisconsin, and maintained the rights of his clients with great ability and persistency. His practice was now large, and as lucrative as his rather easy financial habits could make it; and his fame was rapidly extending. When a case arose that involved the determination by the supreme court of the United States of the constitutionality of the reconstruction acts, Secretary Stanton retained him as one of the counsel for the government. His argument won for him general recognition as one of the foremost constitutional lawyers of his time, and it is scarcely extravagant to say that the civil governments existing to-day in eleven states of the Union rest upon the principle enunciated and supported by him on that occasion.

In 1876, for the first time, happily, in the history of the republic, a cabinet minister, in the person of W. W. Belknap, secretary of war, was impeached before the senate of the United States for high crimes and misdemeanors in office. The respondent retained for his defense Jeremiah S. Black, ex-attorney general; Montgomery M. Blair, ex-postmaster general, and Mr. Carpenter. There could have been no higher compliment to Mr. Carpenter than the fact that his associates, who had stood for years in the very front rank of the American bar, resigned to him the entire management of the case, which he conducted to a successful issue.

The trial of the title to the presidency of the United States before the electoral commission, erected for the purpose by special act of Con-

gress, was another occasion that enlisted the best professional talent in the Union. Mr. Carpenter was retained by Mr. Tilden to submit an argument in favor of counting the votes of the democratic candidates for electors in Louisiana, and he performed the duty with the ability that he never failed to bring to bear upon questions of this important and delicate character.

We have thus sketched imperfectly some of the most conspicuous appearances of Mr. Carpenter, strictly in the character of a lawyer. They by no means fairly represent the character or extent of his professional labors. From 1870 to his decease, though maintaining a residence at Milwaukee, he kept an office at Washington, and practiced mainly before the supreme court of the United States; and his services were retained in very many of the most important cases that have been heard before that tribunal.

Mr. Carpenter had been a democrat from the time that he attained his majority, and in the election of 1860 supported Douglas for the presidency. Upon the attempt of the south to destroy the Union, without formally dissociating himself from that party, he gave his support to the war policy of the administration, and delivered a series of addresses in that behalf that were characterized by great eloquence and patriotic fervor. Subsequently he publicly affiliated with the republican party, and in 1869 was chosen to succeed James R. Doolittle in the senate of the United States.

It is not proposed to dwell upon his political career. It should be mentioned, however, that he was the author of the acts reconstructing in some respects the federal courts and enlarging their jurisdiction to the limits prescribed by the constitution. He was twice chosen president pro tempore of the senate, and presided over that body during several sessions, in discharging which duty he exhibited thorough learning and aptitude as a parliamentarian.

At the expiration of his term, Mr. Carpenter was nominated by the caucus of republican members of the legislature for re-election, but was defeated by a combination of certain republican members with the democrats. In 1879 he was chosen to succeed Timothy O. Howe in the

United States senate, and took his seat again in that body after an interval of four years. It may be worthy of remark in this connection that his celebrated "Janesville speech" was the great cause of his defeat in 1875: yet he considered that the best speech he had ever made, and carefully preserved a printed copy of it.

His return to Washington after his re-election to the senate was signalized by a popular demonstration that illustrated forcibly the enthusiastic feeling, for which admiration is a cold term, in which he was held among those who had come to know him even by casual contact.

His most conspicuous effort during his second senatorial term was, perhaps, his argument in the case of General Fitz John Porter. Senator Logan, in a long and laborious speech, had reviewed the facts. Mr. Carpenter confined himself to the questions of law. With the impregnable logic and irresistible aptness of illustration that characterized him in dealing with legal issues, he combatted the pending bill. The result was notable. The friends of the bill had a clear majority when the debate was opened. After Senator Carpenter's argument they put forward their two ablest champions to reply. Both failed, and they did not deem it expedient to press the measure to a vote. The instances are rare in the history of legislation where a measure having the undivided support in its inception of the members of the majority party, reinforced by some members of the minority, has been thus balked by a single speech.

In June, 1880, Senator Carpenter attended the republican national convention at Chicago, though not as a delegate, and addressed an open-air mass meeting that was called to promote the nomination of General Grant. But his health was greatly impaired, and he was not able to remain in Chicago till the close of the convention. In the campaign that followed his condition made it impossible for him to participate. When Congress assembled in December he was in his seat, but his attendance was irregular, and it was evident that the inexorable disease from which he was suffering was advancing rapidly to its dread consummation. His death occurred on the 24th of February, 1881. The grief that it inspired knew no boundaries in geography or partisanship, and



the rush of events incident to the approaching incoming of a new national administration could not benumb the deep sense of bereavement that reached the remotest confines of the republic. At the next meeting of the judiciary committee of the senate of the United States the following resolution was adopted:

"During a period of nearly eight years' service on this committee, Senator Carpenter's intellectual ability, profound legal learning and remarkable industry commanded the admiration of all who served with him, while his uniformly courteous, kind and agreeable manners won and retained their affection."

The bar of the supreme court of the United States assembled on the 8th of March. Allan G. Thurman was chosen to preside, and, in taking the chair, delivered an address of high, if discriminating, eulogy, in the course of which he used this language, which could be justified on few occasions of like character:

"I am well aware of the proneness to extravagance that has too often characterized eulogies of the dead, whether delivered from the pulpit, in the forum, or in the senate-house. But I feel a strong conviction that, however exalted may be the praise spoken here to-day, it will not transcend the merits of its object, or offend the taste of the most scrupulous and truth-loving critic.

"Mr. Carpenter's whole career was honorable and brilliant. He was the architect of his own fortune and fame. He possessed the advantages of inherited poverty, and was thus in his youth thrown upon his own resources. He learned early the useful lesson of self-reliance, and the necessity of industrious self-exertion, receiving only such aid as his genial manners and bright and active mind gained from those generous friends who perceived in his youth the germs which promised future distinction and who were willing to extend a helping hand to struggling genius. He was a close student and loved books.

"Mr. Carpenter possessed a fine person, was social, pleasant, and winning in his manners. As a speaker he was fluent, logical and eloquent, and possessed in a high degree the charm of manner and magnetic power over his hearers which are essential elements of popular

oratory. He delighted and captivated popular audiences; but his oratory was not of the flowery and superficial kind. He was a man of learning and thought. He not only pleased by his style and manner, but his reasoning convinced his hearers. His independence of thought and character sometimes led him to advocate that side of questions which was unpopular with the people or with his party; and he was fearless in supporting any cause which he undertook to advocate. He defended Credit Mobilier and back pay. He acted as one of the leading counsel for General Belknap, on his impeachment and trial before the United States senate; and he appeared as one of the leading counsel for Mr. Tilden in the great contest for the presidential office before the electoral commission. His nature was genial, kindly and generous; he had no malice in his composition, and he did not excel in that lowest order of intellectual ability which impels its possessor to the use of invective and vituperation. The taste for such displays of his intellectual powers was wholly foreign to his nature, and perhaps fortunately beyond his ability. But in his whole public career, in the courts, in the senate, and in the popular discussion of political questions, he was animated in a larger degree with a spirit of chivalry, tempered by the elevating culture of 'modern civilization,' which throws a halo of honor and fame around the physical warfare of those knights of the middle ages who became famous for their prowess in battle and for their generous forbearance in the hour of victory."

The remarks of Mr. Jeremiah S. Black are given in full, not only on account of the standing of the speaker at the bar, but because of his peculiar intimacy with Mr. Carpenter and his systematic and accurate knowledge of his ability and character.

"The American bar has not often suffered so great a misfortune as the death of Mr. Carpenter. He was cut off when he was rising as rapidly as at any previous period. In the noontide of his labors the night came wherein no man can work. To what height his career might have reached, if he had lived and kept his health another score of years, can now be only a speculative question. But when we think of his great wisdom and his wonderful skill in the forensic use of it, together with

his other qualities of mind and heart, we cannot doubt that in his left hand would have been uncounted riches and abundant honor, if only length of days had been given to his right. As it was, he distanced his contemporaries and became the peer of the greatest among those who had started long before him.

“The intellectual character of no professional man is harder to analyze than his. He was gifted with an eloquence peculiar to himself. It consisted of free and fearless thought, given through expression powerful and perfect. It was not fine rhetoric, for he seldom resorted to poetic illustration; nor did he make a parade of clenching his facts. He often warmed with feeling, but no bursts of passion deformed the symmetry of his argument. The flow of his speech was steady and strong as the current of a great river. Every sentence was perfect; every word was fitly spoken; each apple of gold was set in its picture of silver. This singular faculty of saying everything just as it ought to be said was not displayed only in the senate and in the courts,—everywhere, in public and private, on his legs, in his chair, and even lying on his bed, he always ‘talked like a book.’

“I have sometimes wondered how he got this curious felicity of diction. He knew no language but his mother tongue. The Latin and Greek which he learned in boyhood faded entirely out of his memory before he became a full-grown man. At West Point he was taught French and spoke it fluently; in a few years afterward he forgot every word of it. But perhaps it was not lost; a language or any kind of literature, though forgotten, enriches the mind as a crop of clover plowed down fertilizes the soil.

“His youth and early manhood was full of the severest trials. After leaving the military academy he studied law in Vermont, and was admitted, but conscientiously refused to practice without further preparation. He went to Boston, where he was most generously taken into the office of Mr. Choate. He soon won not only the good opinion of that very great man, but his unqualified admiration and unbounded confidence. With the beneficence of an elder brother, Choate paid his way through the years of his toilsome study, and afterward supplied



him with the means of starting in the west. The bright prospect which opened before him in Wisconsin was suddenly overshadowed by an appalling calamity. His eyes gave way, and trusting to the treatment of a quack, his sight was wholly extinguished. For three years he was stone-blind, 'the world by one sense quite shut out.' Totally disabled and compassed round with impenetrable darkness, he lost everything except his courage, his hope, and the never failing friendship of his illustrious preceptor. Supported by these he was taken to an infirmary at New York, where, after a long time, his vision was restored. Subsequent to these events, and still under the auspices of Mr. Choate, he returned to Wisconsin and fairly began his professional life.

"It would be interesting to know what effect upon his mental character was produced by his blindness. I believe it elevated, refined and strengthened all his faculties. Before that time much reading had made him a very full man; when reading became impossible, reflection digested his knowledge into practical wisdom. He perfectly arranged his storehouse of facts and cases, and pondered intently upon the first principles of jurisprudence. Thinking with all his might, and always thinking in English, he forgot his French, and acquired that surprising vigor and accuracy of English expression which compels us to admit that if he was not a classical scholar, he was himself a classic of most original type.

"He was not merely a brilliant advocate, learned in the law, and deeply skilled in its dialectics; in the less showy walks of the profession he was uncommonly powerful. Whether drudging at the business of his office as a common-law attorney and equity pleader, or shining as leader in a great *nisi prius* case, he was equally admirable, ever ready and perfectly suited to the place he was filling. This capacity for work of all kinds was the remarkable part of his character. With his hands full of a most multifarious practice he met political duties of great magnitude. As a senator and party leader he had burdens and responsibilities under which, without more, a strong man might have sunk. But this man's shoulders seemed to feel no weight that was even inconvenient. If Lord Brougham did half as much labor in quantity and

variety, he deserved all the admiration he won for versatility and patience.

"Mr. Carpenter's notions of professional ethics were pure and high-toned. He never acted upon motives of lucre or malice. He might take what he called a bad case, because he thought that every man should have a fair trial; but he would use no falsehood to gain it; he was true to the court as well as to the client. He was the least mercenary of all lawyers; a large proportion of his business was done for nothing.

"Outside of his family he seldom spoke of his religious opinions. He was not accustomed to give in his experience,—never at all to me. He firmly believed in the morality of the New Testament, and in no other system. If you ask whether he practiced it perfectly, I ask in return: Who has? Certainly not you or I. He was a gentle censor of our faults; let us not be rigid with his. One thing is certain, his faith in his own future was strong enough to meet death as calmly as he would expect the visit of a friend. Upwards of a year since his physicians told him that he would certainly die in a few months; and he knew they were right; but with that inevitable doom coming visibly nearer every day, he went about his business with a spirit as cheerful as if he had a long lease of life before him.

"I think for certain reasons that my personal loss is greater than the rest of you have suffered. But that is a 'fee grief due to my particular breast.' It is enough to say for myself, that I did love the man in his lifetime and do honor to his memory now that he is dead."

The obsequies consequent upon the death of Senator Carpenter at Washington, and subsequently at Milwaukee, were grand and imposing; at the latter city almost the entire population were out on the occasion. Among the distinguished members of the committee of the senate who escorted the body to Wisconsin was Roscoe Conkling, upon whom it devolved to formally transmit the sacred trust to the care of the authorities who assumed the charge. On this occasion that distinguished gentleman made use of the following beautiful sentiment, addressing Governor William E. Smith: "Deputed by the senate of

the United States, we bring back the ashes of Wisconsin's illustrious son, and tenderly return them to the great commonwealth he served so faithfully and loved so well. To Wisconsin this pale and sacred clay belongs, but the memory, the services, and the fame of Matthew Hale Carpenter are the nation's treasures, and long will the sister states mourn the bereavement which bows all hearts to-day." To this Governor Smith appropriately and feelingly responded. Mr. Carpenter was buried in the beautiful Forest Home Cemetery in the suburb of Milwaukee, April 10, 1881.

The writer who shall attempt to analyze the life, talents and character of Matt. H. Carpenter will perhaps find a key in the proposition that he was above all else a lawyer. This fact formed his moral constitution. It accounts for some of the most notable achievements and some of the errors that his most elaborate biographer will be called upon to record. His best speeches in the senate were delivered when he had to deal with legal questions and such as called for the essentially lawyer-like method of discussion. When the occasion arose for a broader grasp, and for a manner of treatment that may be called statesmanlike, in contradistinction to lawyer-like, he was sometimes disappointing. Moreover, he seems at times to have expended less effort in keeping his party right than in showing how ingeniously it could be defended when it was wrong.

Mr. Carpenter's brilliant success at the bar and his conspicuous services in the arena of national legislation won for him a more than continental reputation, and attracted to him in a high degree the attention of his fellow-countrymen, so that in his day he was one of the most conspicuous of Americans. It is the fate of all who occupy so prominent a place in the public eye to be the subject of some popular delusions, and Mr. Carpenter did not escape. One of these is deserving of correction for the benefit of younger members of the profession. This impression assumed him to have been a gifted man of indolent habits, and his most eloquent utterances and most profound arguments to have been the easy products of something which it is common to call genius. Nothing can be farther from the truth. In his case, as it may be suspected in most



cases, genius is the capacity and willingness to work sixteen hours out of the twenty-four. Mr. Carpenter did not fail to comply with the conditions prescribed by the great Roman lawyer, and dedicated twenty years to nocturnal studies. He was an indefatigable worker, and notwithstanding the thoroughness of his equipment and the readiness with which he commanded the best weapons in his arsenal, he devoted labored preparation to every cause in which he enlisted. It is to be wished that this may have some influence in impressing upon the young lawyers of Wisconsin that the profession reserves its highest rewards for those who "scorn delights and spend laborious days."

On this subject G. W. Hazelton said in a memorial address delivered before the Milwaukee bar that if any one doubts Mr. Carpenter's "marvelous industry, let him examine the reports of the federal courts and the court of Wisconsin for the past thirty years. He worked out his results as a judicial student, as the artist works out his conception from the quarried marble. He burnt the midnight oil over his cases. He left no field unexplored which could shed light upon his path, and so, with the aid of a mind naturally bright and comprehensive and a strong physical organization, he pressed his way by the most earnest application and thorough study, step by step to the front rank of a noble but exacting profession. He has not left behind him a more diligent, a more devoted student in the profession. The secret of his success at the bar may be inferred from what has already been said, but it will not be improper, I trust, to refer to some of his mental traits. He possessed the ability to grasp the strong points of a case, and great readiness and skill in analyzing and distinguishing, as well as applying, the vital principles or doctrine of cases cited in support of or in opposition to the case under consideration. In this particular he was conspicuous and masterly. His subtle insight, his legal acumen, his ready ingenuity were never displayed to a better advantage than when he was seeking to trace a legal deduction which he desired to establish from a mass of apparently conflicting authorities. In this field, I venture to suggest he has left behind him no superior. To the qualities already mentioned should be added the potency of a marvelous personal magnetism, and a wit which seemed

to be as much a part of himself as the fragrance is part of the rose. A wit, moreover, be it said to his credit, as free from malice as it was spontaneous and happy. It was displayed in private conversation, in the court room, in the senate chamber, and everywhere to the delight of his auditors. It was as sparkling as the choicest wine, and always coined upon the instant. 'Put him out!' shouted a friend of the senator, when some one near the door interrupted the speech he was making with an impertinent inquiry. 'No,' retorted Carpenter, instantly, 'don't put him out, change his drink!' During the delivery of the so-called 'Janesville speech,' the effect of which was a matter of some anxiety to Mr. Carpenter, a confusion occurred at the rear of the hall which diverted the attention of the audience for a moment from the speaker. Turning to the chairman with a quizzical expression and an inquiring tone, he said: 'Mr. Chairman, I observe some confusion near the door; I have been endeavoring to determine whether it is occasioned by those outside trying to get in or those inside trying to get out.' A moment later he was dashing along on the current of his thought, like a yacht before the wind."

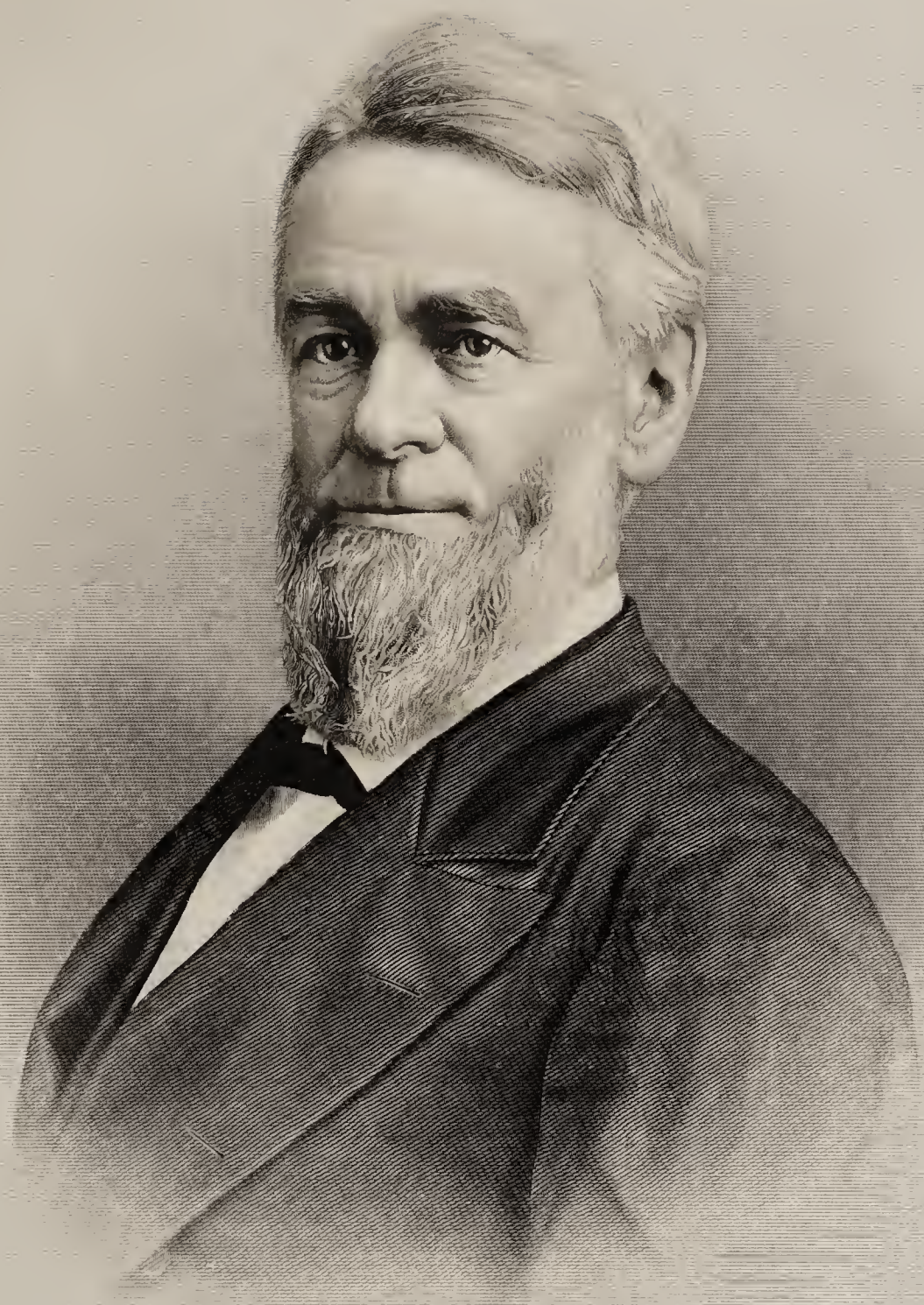
Among the many notable public efforts made by Mr. Carpenter he considered his celebrated Janesville speech the best he ever made; yet it is none the less true that the effect of this very speech, which was published at that time, was the means of defeating his re-election to the United States Senate in 1875.

As an evidence of the foresight of Mr. Carpenter it may, in justice to his memory, be said that he was one of the earliest to prognosticate the railroad monopoly that is now upon the country, and delivered an address upon that subject in 1874.

#### A. R. R. BUTLER.

The mere details of the career of this distinguished lawyer may be briefly stated. He was the eldest son of Dr. A. R. R. Butler, of the state of Vermont, an eminent physician of his day, and was born in that state on the 4th day of September, 1821. In the following year his father moved to Genesee county in the state of New York, where the





*W. R. Butler*

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son, after a thorough academic education studied law and subsequently, at the city of Buffalo, completed his course of study and was admitted to the bar in the year 1846. Upon his admission he determined upon the city of Milwaukee for his future home and there entered upon the practice of his profession in the autumn of that year. At that time the city of Milwaukee had but recently been incorporated and contained a population of about nine thousand. He has since resided there and has witnessed, participated in and contributed to the growth and advancement of the city. At the outset of his professional career he had for competitors and as opponents in forensic strife those intellectual giants, Edward G. Ryan and Jonathan E. Arnold, and therein acquitted himself with honor, early establishing a reputation for ability, studious care and strict discharge of duty that won him high rank in the profession. In the year 1849 he was called to the office of district attorney, holding the position for six years and performing its duties with ability and success. He conducted the prosecution of several criminal cases which attained wide celebrity, either in connection with or in opposition to the distinguished lawyers named, and proved himself their peer in debate and in clear and vigorous presentation of the law. At the conclusion of his last term of office as district attorney he engaged in the general practice of his profession, declining all political preferment, except that, in the year 1866, he was persuaded to serve a term in the legislature of the state, and in the year 1876 he yielded with reluctance to the general desire that he should become mayor of the city, to which position he was elected without opposition. He retired from active practice in the year 1874 with a competence secured by prudent investments and by frugal living. He still survives to enjoy life—*otium cum dignitate*—not, however, in the least degree abating his interest in the profession which has been to him his chiefest delight. He was frequently urged by eminent members of the bar to accept judicial office—on one or two occasions that of chief justice of the supreme court—but he declined the proposed honors, preferring his place at the bar to official position, however high.

In personal appearance Mr. Butler is of erect and commanding

mien, grave and dignified in carriage, gentle and pleasant in all social relations, without undue familiarity. He impresses one as a man who marks out his way with deliberation and with caution and, having determined the course, pursues it with energy and persistence.

It has been truly stated that "The fame of the advocate is ephemeral, fading with the memories of those who heard him. We write the record of our lives upon the sand, the incoming tide of a succeeding generation blots out the record forever." And so it must be with respect to Mr. Butler's fame. The masterful pleas addressed by him to the court and jury during his thirty years of active professional life have unfortunately failed of permanent record, except as briefly noted in the reports of the supreme court of the state. His wonderful magnetic power in delivery, his intensity of conviction in the justice of the cause he represented, the forceful presentation of his propositions and the dramatic fervor with which he pressed them home to conviction upon the minds of court and jury, are retained only in the fading memories of his few surviving contemporaries and of those—now past middle life—who sat at the feet of this legal Gamaliel to drink in inspiration of their profession. But perhaps better and more enduring than such exhibition of masterful power of advocacy is the example of his professional life with respect to the ethics of his profession. He relied not upon the inspiration of the moment. He made ready his cause with thoroughness and thoughtfulness, sparing neither time nor labor in its preparation. He was self-contained, self-reliant, never taken unawares. He passed his word of promise with slow and cautious deliberation, but the promise, once given, was inviolable. He looked for success—and he looked not in vain—in the ability to perform and in the conscientious performance of the professional duty committed to him. He deprecated the more recent methods of securing practice which intense competition has introduced, as undignified and unprofessional, tending to lower the noble profession of the law to a mere trade or business. Withdrawn these many years from active professional pursuits, he yet survives, a bright example of a noble, able, learned lawyer and eloquent advocate, entertaining and illustrating in his professional



life those old-fashioned traits of honor and decorum which unhappily in present professional life seem to have lost some of their potency. In private life he is the kindly, courteous, considerate Christian gentleman, commanding the respect, the esteem and the love of his acquaintances.

JAS. G. JENKINS.

### JEDD P. C. COTTRILL.

Jedd Philo Clarke Cottrill was born in Montpelier, Vermont, April 15, 1832. He received an academic and collegiate education, having graduated from the University of Vermont in 1852. For a time he was teacher in the common schools and an academy of his native state. His preparatory legal education was received in the office of Peck & Colby, a distinguished firm of practitioners doing business in the town of his birth. In 1854 he was admitted to the bar, and in November, 1855, removed to Milwaukee and entered the then firm of Butler & Buttrick, his name appearing as the junior member; later the firm became Butler & Cottrill, and later yet a new firm was organized as Cottrill & Cary, A. L. Cary being the second named. This firm was subsequently changed to Cottrill, Cary & Hanson, Burton Hanson being the new member. After the dissolution of this firm Mr. Cottrill formed a partnership with Vincent H. Faben.

In 1865-66 Mr. Cottrill was district attorney of Milwaukee county. During the years 1867 to 1870 he resided in New York. In 1875 he was appointed by the justices of the supreme court a member of the commission to revise the statutes. "In the revision of the statutes, besides compiling several chapters, his great work was the annotation of the decisions of the supreme court to the section construed. Bench and bar have yet failed to discover an error in this work by him performed."\* In 1882 Mr. Cottrill was elected to the state senate as a democrat and served in the sessions of 1883 and 1885. At this period his health had begun to fail and his services to the state were less valuable than they would otherwise have been. His illness was prolonged and terminated February 8, 1889. On the following day the Milwau-

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\*E. E. Chapin, Esq., in his address to the United States circuit court.

kee bar association met to take action on his death, and Messrs. J. W. Cary, Samuel Howard, Francis Bloodgood, Sr., A. R. R. Butler and B. K. Miller were designated a committee to report resolutions of respect. After reciting some facts concerning Mr. Cottrill, the tribute adopted by the association expressed that he had been regarded as a prominent and leading member of the Milwaukee bar. "He has been engaged in a great part of the important litigation in this state for the last thirty-four years; . . . of a strong mind and bright intellect, thoroughly grounded in the principles of the law and possessed of a ready and forcible manner of expressing his ideas, he was no mean opponent of the oldest and ablest members of the profession. His close, discriminating mind enabled him to see the weak points of his adversary, and he was not slow in taking advantage of them. Of a cheerful and social turn and a mind well stored with information, he was an agreeable and entertaining companion as well as an able lawyer. Of an affectionate and kindly nature and popular manners, he was esteemed a general favorite among his acquaintances."

This memorial was presented to the supreme court by Samuel Howard; to the United States circuit court by Emmons E. Chapin; to the Milwaukee circuit court by Burton Hanson, and to the Milwaukee superior court by George E. Sutherland. Mr. Chapin said in part: "Not often are we called to mourn the loss of one so remarkably gifted and generally beloved; one who illustrated and adorned his profession by ripe scholarship and legal learning; one who occupied a large place in the public confidence; one whose future promised still greater honor to himself and greater usefulness to the commonwealth when stricken by paralysis a few short years ago.

"Nature had done much for Brother Cottrill; she had endowed him plentifully with brotherly love, truth, charity, justice and mercy. She had given him 'at the outset abundantly of human love and human sympathy, aye, she had given him a human heart. These natural qualities were adorned by a liberal, polished education. With such a foundation he was well qualified for the profession which he so loved and honored.

"He lived in and by the practice of the law. He was no speculator. He supported himself and his family while he was mentally and physically strong in a most honorable practice of the law. He was honest, well-willed, constant and sincere in all his works. . . .

"What he once said of a brother lawyer I may now say of him: 'While he was firm and uncompromising, especially against any proof or suspicion of wrong, and while he held to the rights of his client and what he believed to be the right of the case with unyielding tenacity, his manner was never offensive. His practice of the law was honorable to him and to the profession. He advised away from rather than towards litigation. He recommended friendly compromise and amicable adjustment rather than suits or controversy. He saw but the interests of his client, and in so doing was blind to every personal and selfish consideration. His personal life was the counterpart and reproduction of his professional life. He could not be different as a man from what he was as a lawyer.' "

Samuel Howard, Esq., addressed the court orally upon Mr. Cottrill's life work. In response to their addresses Judge James G. Jenkins said: "The court has received with sensibility the formal announcement of the death of one who for more than a quarter of a century stood among the foremost in the ranks of a bar that is honored to count among its members a Ryan, an Arnold, a Lynde. It is well when such a one has passed into the great unknown that those who in life were his professional associates should take action upon his death and make permanent record of his work and character.

"So far as relates to his professional life the court cordially concurs with all that you, Mr. Chapin, and you, Mr. Howard, have so well and so feelingly said of Mr. Cottrill. There was perhaps no other member of the bar capable to sustain the continued labor in which Mr. Cottrill indulged. Indeed, work seemed for him a normal condition of life, and recreation was looked upon by him with regret as a consumption of time that should be devoted to labor. He was rapid and accurate in his work, disposing of a volume of business with an ease and rapidity that was astonishing. He had none of the graces of oratory; none of that



suaviter in modo that wins through popularity, appealing to sentiment, but he was possessed of that fortiter in re that compels conviction in unwilling minds. He relied for success upon the probative force of his facts and upon a correct apprehension of the law; not upon appeals to passion or prejudice. He was always strong, because he first convinced himself of the justice of the cause committed to his keeping. He was diligent to ascertain and careful logically to array and present his facts, and he pressed them home upon the mind with all the strength of an earnest, positive nature convinced of their truth. And therein consisted the secret of his success as an advocate. Grace of manner and beauty of diction may charm the fancy; but facts and their forcible presentation by one persuaded in his own mind can alone compel conviction. No counsel can succeed who doubts the justice of his cause. To convince others, one must be first himself convinced.

"Mr. Cottrill's conception of the duty owing by counsel to client was of the highest type. He stood for his client against the world without thought of personal gain or loss. He would yield nothing that he deemed essential to the interests of his client. He was steadfast to his duty, uncompromising and unyielding. At the same time he recognized the duty of opposing counsel to be equally immovable. Innately and thoroughly honest, he abhorred fraud and wrong and prosecuted them with relentless vigor. He was devoted to his profession. He conceived it to be the highest of all the learned professions, because 'charged with the earthly administration of the justice of God.' He was jealous of its good name and fame, and was not tolerant to any act of its members that tended to disgrace an honorable calling. His research and presentation of the law was painstaking, thorough, discriminating, greatly aiding the court in the consideration and solution of the question presented. He was not always right, for infallibility is not an attribute of counsel or of courts. But he always thought he was right and tenaciously held to an opinion once deliberately formed. He seldom recognized the correctness of an adverse judgment. He could not. He submitted, but was not convinced.

"In all professional labor he was careful, thorough, discriminating,

able, persistent. In professional conduct he was upright and honorable. Through a long period of years he was faithful to his high calling; faithful to the duty it enjoined; faithful to its trusts.

"He was also a kind-hearted, generous man. Grief or pain or want would touch him to the quick. Seldom is it that one finds such qualities so centered in one man. Almost dogmatic in opinion, unflagging in energy, unrelenting in purpose, unyielding in duty, merciless toward wrong, he had the heart of a child, responding to every touch of human suffering or human want. His friendships were not many, but were strong and stable. His devotion to and pride in his native state were phenomenal. His love for the place of his birth and the scenes and companions of his youth knew no weakening or abatement from separation. To the last the green hills of Vermont were to him an inspiring memory. His affections—as his purpose—were deep, strong and abiding."

On April 25th, 1889, Mr. Howard presented the memorial of the Milwaukee bar to the supreme court, and delivered a carefully prepared and admirable address, from which the following extracts are made. Referring to the facts that a few years after Mr. Cottrill came to Wisconsin the code of procedure was adopted, and that old lawyers looked with suspicion and distrust upon the radical innovation thereby made in the practice, he said that the subject of this sketch "grasped the spirit of the system at once. With the vigor of the earnest student he mastered it. He became the leading code lawyer, without a rival and without a peer. For years he was engaged in three-fourths of the important litigation of our city. Not alone the code, he was master of the common law, both civil and criminal. His training had been such and his brain so active that he seemed to subdue with ease every subject he examined. His memory was a marvel. Not so much a memory of words as of acts and ideas. In this he was very much like Hortensius, the polished lawyer in the latter days of the Roman republic. If I should be asked if I could name a man who could have written the story of the ten thousand Greeks, after the march, with all its details and philosophical reflections, from the start with Cyrus, the death of

Clearchus, the plains, the villages, the rapid rivers, the vision, the mountain of snow, until the whole army was electrified by the shout of the sea! the sea! I should say Mr. Cottrill could have done it. He was a rapid and skillful worker. His mind kept even pace with the motion of his pen and in unison with it. When absorbed in drawing a difficult pleading he rarely consulted statute or authority. He would write page upon page of difficult work without a single erasure or interlineation. While a student in his office I have seen him draw pleadings as rapidly as I could copy them.

"Above all things, Mr. Cottrill was a lawyer born, not made. He was a lawyer in the strict definition of the word. He was a philosophical lawyer, one who searches for the origin of legal principles. He was a student of jurisprudence, of philosophy, history, science, poetry, music and the arts. He could draw from the very source of learning when the occasion needed it to fortify his cause. He might be likened unto Sulpicius, who reduced the principles of law to a science. With Mr. Cottrill, the lawyer was above the advocate. It could be said of him that he was more of a lawyer than an advocate. He was at his best before the court. His manner was earnest and his language chaste and always at command. And when the subject demanded it, he might be called in his argument an eloquent civilian, a term so fondly used by Cicero. He was too good a lawyer to be placed with the advocate. The business of the advocate is to impress by his voice and manner and style and delivery; of the lawyer, to convince by the power of reason."

Mr. Justice Taylor responded to the memorial and address. He said in part: "As a member of the bar of this court Mr. Cottrill stood deservedly high. When he first began his practice in this court he had to contend with those able, clear-headed and vigorous-minded men who composed the pioneer members of the legal profession in this state, whose love of justice and right aided this court in laying the foundation of the judicial system of the state upon correct and sound principles of law and justice; he also had to contend with those men, coming later, who brought to the bar of this state more learning and the culture of



the schools, with perhaps an equal amount of mental vigor and more persistent labor.

"Mr. Cottrill had, as a lawyer, one characteristic which entitled him to great credit. He was always strictly loyal to his client's cause. When he took the cause of his client he took it without a doubt in his own mind as to its justice.

"While this spirit of loyalty kept him firm in the belief of the rightfulness of his client's cause it did not render him blind to the position of the opposite counsel or lead him to treat with contempt his arguments or his cause. Having faith in the justice of the cause he advocated, his principal effort was to aid the court in getting a clear conception of his client's side of the controverted questions, without spending much time in combating the positions taken by his adversary. He was content to present one side of the case, and that side was always the side of his client.

"I had the good fortune to be associated with Mr. Cottrill for over two years in the work of the revision of the statutes of this state, and during that time had an opportunity to learn some of the mental characteristics of the deceased. He always exhibited a clear conception of the nature of his work, and he clearly apprehended the relations of the separate parts of the statutes to the statutes as a whole. This readiness on his part to comprehend the relation of things was a very great aid in giving consistency and unity to the revision.

"Although nature had endowed him with mental tendencies which impelled him to the investigation of many subjects, especially those which relate to government and social relations, he was always able to control this tendency toward diversified labor, and concentrate his energies upon that which for the time being demanded his particular attention. During my association with him I learned that the deceased was a conscientious man, that he aimed to do right, and that if he at times erred, his errors were errors of judgment and not of the heart."

## WILLIAM PITT LYNDE.

From 1841 until 1885 William Pitt Lynde was an honored member of the Wisconsin bar; during much the greater portion of that time he was recognized as a lawyer of great learning and ability and during the whole period as a man of the highest character.

Mr. Lynde was born at Sherburne, New York, December 16, 1817. His parents were natives of Massachusetts and removed to Sherburne in 1800. The father was engaged in mercantile pursuits. Mr. Lynde's preparatory education was obtained at Hamilton academy and Courtland academy in his native state. He was a student at Hamilton college two terms, entering there in 1834; entering the sophomore class of Yale college, he completed his course and graduated with the highest honors of his class in 1848. He is said to have excelled as a student in the ancient languages and to have been especially proficient in Greek. Soon after graduation he entered the law department of the University of New York and had for instructors Benjamin F. Butler, David Graham and Chancellor Kent. He finished his legal education at Harvard, under the instruction of Story and Greenleaf, and was graduated in 1841. In the same year he was admitted to the New York bar and in the fall started for and arrived at Milwaukee. In 1842 he formed a partnership with Asahel Finch, Jr., which continued until 1857, when H. M. Finch and B. K. Miller, Jr., became members; as thus constituted the firm continued until Mr. Lynde's death. The date of his admission to the bar of the supreme court of Wisconsin was July 17, 1843.

During the almost half century of Mr. Lynde's residence in Milwaukee he was highly honored by his fellow-citizens and the officers of the government. He served as president of the village; was attorney general of the territory in 1844, and United States district attorney from 1845 till the admission of the state, resigning the former office to accept the latter. In 1848 he was elected a member of Congress and served until March, 1849; in 1850 he was mayor of Milwaukee; in 1859



Wm P Lynde





he was the democratic candidate for associate justice of the supreme court, but was defeated by Byron Paine, the vote being 40,500 against 38,355; he served in the popular house of the legislature in 1866; in the state senate in 1869 and 1870; was elected to Congress in 1874 and again in 1876, and served therein as a member of the judiciary committee and as one of the managers of the Belknap impeachment trial. The memorial of the Milwaukee bar, prepared by Messrs. J. W. Cary, E. Mariner, F. W. Cotzhausen, E. E. Chapin and Jas. G. Flanders, says of Mr. Lynde's official life that he "was an able and leading member" of the Congresses to which he was chosen "and acquitted himself with great credit in the debates on the important matters considered by them, and was highly esteemed by his fellow-members and the country generally as an able and safe legislator. His course as assemblyman and senator for the state of Wisconsin was always dignified and honorable and his action in the right direction. His administration of the affairs of the city, as mayor, was able, clean and without any stain of dishonesty or jobbery; and his discharge of the duties of attorney general and district attorney of the United States was able and skillful and tended greatly to enhance his professional reputation and standing."

Mr. Lynde's health was almost uniformly good until within a few months of his death, which occurred at his home in Milwaukee, December 18, 1885. The memorial referred to continues: "Although the offices held by our deceased brother were numerous, important, and highly honorable, and their duties were discharged by him with honesty and ability, yet it was as a lawyer and member of our profession that his greatest success was attained, his greatest triumphs won, and his most enduring reputation secured. It was in his profession that he felt the greatest pride and to it were given his best study and effort. No other member of our association can boast of a professional life in Milwaukee of over forty-four years' continuous practice, and very few of our profession are ever permitted to spend that number of years in the active practice of law. The extent and importance of the business entrusted to his firm, during the many years of its continuance, justly entitled it to be considered the leading law firm of the city and state,

as it in fact was. His law office and law firm were not only the oldest in the city, but the oldest and most extensively known in the state. His learning and ability, in connection with his associates, has established a reputation and business for his firm of great value and a rich inheritance for his successors. Few, if any, lawyers in the state were as well read as Mr. Lynde. He had a thorough knowledge of the jurisprudence of the country, was conversant with the text books and reports, and well equipped in all branches of the law. He was not only well posted in his profession, but was a thorough scholar on general subjects, and to a considerable extent kept up his classical studies. Some twenty-five years ago Mr. Lynde was in the habit of daily spending some portion of his time in reading Greek from the original, in which exercise he took great pleasure, and was frequently found engaged in it at his office. He took a lively interest in all charitable enterprises and organizations for the benefit of the human family. In all social relations of life he was affable, kind and courteous to all and was universally esteemed and respected. Mr. Lynde belonged to the Presbyterian church, of which he was a faithful and consistent member, supporter and attendant during all his life in Milwaukee.\* One of his first acts on reaching the city was a subscription to a fund for the purchase of the original site of the First Presbyterian church, and at the time of his death and for many years previous he was one of the ruling elders. He was catholic and liberal in his religious views, and popular with other denominations.

“Our brother, who for so many years presided over this organization, has left us; his labors are ended, and he has gone to his reward;

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\*A writer in the Magazine of Western History says that Mr. Lynde was an earnest, active churchman because he was a sincere believer. He had subjected the Scriptures to a searching analysis, and weighed the evidence bearing on their integrity and veracity in the serene altitudes of his judicial mind, and had not found them wanting. An impromptu utterance of his has fortunately been preserved which illustrates the stability of his convictions on the subject. A question of skeptical import arose in the family circle one day, and when it was the opportune time for him to speak he said: “Judged by all the rules of evidence, there is no fact in history nor any truth in philosophy more clearly demonstrated than is the divine verity of the life and teachings of Christ.”



but he has left us the record of his pure and unspotted life, his high character and learning, his uniform kindness and courtesy in all his intercourse with the members of the bar and in all relations of life, and the example of his noble and manly efforts for success in his chosen and loved profession, in which he was so greatly distinguished and successful."

The memorial of the Milwaukee bar association was presented to the supreme court May 27, 1886, by John W. Cary, who made an address. S. U. Pinney also addressed the court. On behalf of his associates Mr. Justice Orton said:

"It has been my good fortune and is now one of the most pleasing memories of my life to have known Mr. Lynde since his early youth and to have been intimately acquainted with him in Wisconsin for more than forty years. I may therefore, without undue assumption, speak from actual knowledge of his character and his worth. The courts, the bar, and the people of Milwaukee and of the state at large, and this court and its bar, in his death have met with a great and irreparable loss. As a lawyer and profound jurist, as a statesman and safe counselor, as a great thinker and finished scholar, as a gentleman of business and adviser of business men, as a pure, benevolent, generous and high minded citizen, and as a husband, father, friend, neighbor and Christian gentleman he was pre-eminent. These words of praise and commendation are not the mere idle expression of the cold and common charity for the dead, but the sincere and truthful utterances of a long-established and well-grounded common opinion and public sentiment of his true character, uninfluenced by his sad and sudden departure. What might have been unseemly or offensive words of flattery to the living may now well be spoken in his praise, so well merited and deserved. Flattery cannot soothe the dull, cold ear of death, but such a pure and noble example cannot be too highly commended to the living.

"It is seldom that there has been a human life more useful, finished and complete. He was guilty of no waste of time or neglect of opportunity. From his early manhood, as a pioneer in the early settlement of the state, to the end, his life work has consisted of good deeds and

faithful public service, well known to our people and needing no special enumeration. He is as well known as the history of the state, of which his life and services formed so large a part. That man has not lived in vain, but has accomplished all that was possible in human life, who has assisted in laying the foundations, framing the institutions, and determining the destinies of a great state, and by his counsels and labors aided in shaping its policies, enacting and administering its laws, and after holding and honoring many of its highest offices as public trusts and performing faithfully every duty in all of his official, professional and personal relations, has left such a pure and noble example and an unsullied name. From the beginning he attained high rank in his profession, and his practice in the courts, both state and national, has always been large, lucrative and important. His professional as well as his personal character was evenly balanced and symmetrical, and his mental faculties were evenly and equally developed. He had no eccentricities of character or conduct, no startling surprises or episodes, no wild flights of fancy or vagaries of the imagination, no theoretical experiments or legal adventures. He pursued the even tenor of his way, not on a plane, but upwards, ever advancing towards the true end of his aspirations. His perceptive and reasoning faculties predominated, and with his great learning and clear observation he had well considered opinions and reliable judgment upon all matters of important concern.

“His profound knowledge of the law and studious preparation of his causes, his clearness and ability in argument, and his unbiased and conscientious perception of legal and moral truth and right, his inflexible and unbending integrity, his kindly and even tender feeling towards others, his urbane and courtly manners and gentlemanly bearing, the high respect and honor in which he cherished our noble profession, and his uniform courtesy and candor towards the courts and his legal associates were his conspicuous and most admirable characteristics. Mr. Lynde was remarkable for the uniformity of his life. His personal appearance changed but little with his years, and that so gradually as to be scarcely observable, and his age only added to his wisdom and capabilities. His years had been comparatively many, but he was still

in that unimpaired maturity and ripeness of experience and judgment when his usefulness and abilities were the greatest, and his death the greatest loss. He had suffered affliction and trials and had been purified in the crucible of human experience from all dross and grosser elements of our nature, and his character was like fine gold. He had not survived his activities and capabilities for still greater usefulness, nor yet the hope and prospect of still higher honors. His pathway was a bright and shining one, and all may see and follow it."

### JOHN R. SHARPSTEIN.

While resident in Wisconsin Mr. Sharpstein was active and prominent, having been district attorney of two counties, state senator, United States district attorney, newspaper editor, postmaster, superintendent of schools and member of assembly. After changing his residence to California he became, first, judge of a district court, and then an associate justice of the supreme court.

John R. Sharpstein was born in Richmond, Ontario county, New York, May 3, 1823. His family settled on a farm about twenty-five miles from Detroit, Michigan, when he was twelve years of age; there he resided until he was admitted to the bar in 1847. His education was obtained in the schools and other institutions of learning in the vicinity of his residence. Immediately after admission he removed to and located in Sheboygan county, Wisconsin. In the spring of 1848 he was appointed district attorney to fill a vacancy caused by the resignation of David Taylor. Early in 1849 he took up his residence in Southport, now Kenosha, and opened a law office there. The next year he was elected district attorney; his stay there was very brief. In 1852 and 1853 he was state senator from Milwaukee. In May, 1853, he was appointed United States district attorney, a position he held until 1857, when he resigned. While occupying that office he was closely connected with the important case of Ableman vs. Booth, which ran the gauntlet of the state and United States supreme courts. In 1856 Mr. Sharpstein became the proprietor of the Milwaukee News, the editorial control of which he retained about six years. In 1857 he was appointed



postmaster of Milwaukee. The senate refused to confirm his nomination, hence his service in that capacity covered but little more than one year. In 1860 he was a delegate to the democratic national convention, and was a firm supporter of Mr. Douglas. In the spring of 1862 he was appointed superintendent of schools in Milwaukee, which office he resigned to take his seat in the popular branch of the legislature in the session of 1863. For about a year after the adjournment of the legislature he was in partnership with H. L. Palmer, of Milwaukee, in the practice of the law. His health became seriously affected by the climate and in 1864 he removed to California and engaged in the practice of the law in San Francisco. In 1874 he was appointed to fill a vacancy in the bench of the twelfth district court, and in 1879 was elected an associate justice of the supreme court. In making the allotment of terms he drew the three-year term, but in 1882 he was re-elected for a term of twelve years. While holding that office he died December 27, 1892, after a brief illness. The proceedings in the supreme court commemorative of his life, including the resolutions of the Milwaukee bar association adopted just prior to his removal from Wisconsin, are published in vol. 96, California reports, page 675.

### BENJAMIN KURTZ MILLER.

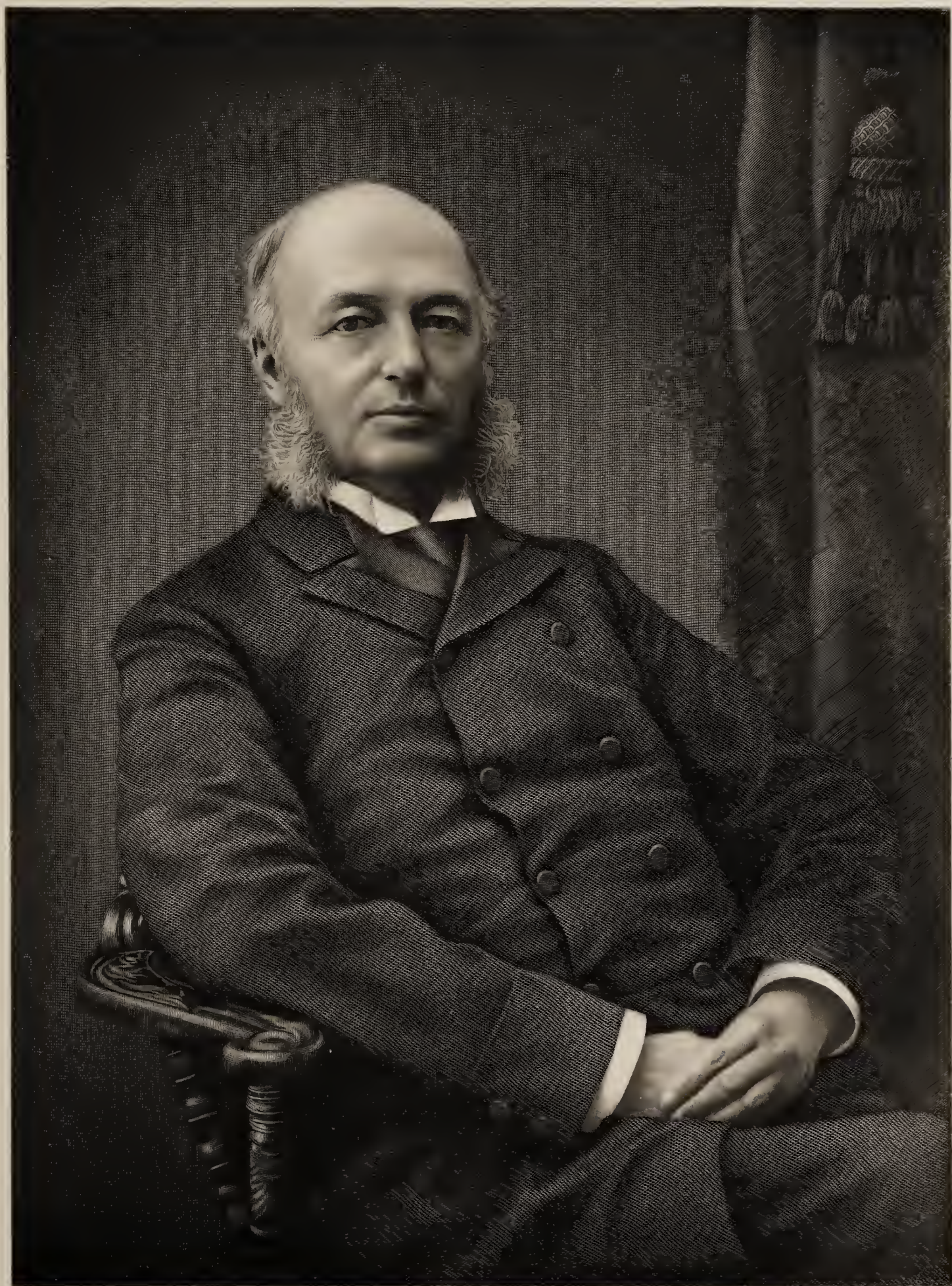
BY W. W. WIGHT.

Andrew Galbraith Miller removed with his family from Gettysburg, in his much honored native state of Pennsylvania, to the village of Milwaukee, in May, 1839. On November 8, 1838, President Martin Van Buren had appointed Mr. Miller an associate justice of the supreme court of the territory of Wisconsin,\* and his removal hither, undertaken in the following spring, was in consequence of this appointment.

In the decades before railways it was a journey of more than twenty days from the capital of the Keystone state to the new home which the Millers were seeking in Wisconsin. A lad of eight years, a son of Judge Miller, just mentioned, and of Caroline E. (Kurtz) Miller, his wife, Ben-

\*Wisconsin Historical Collections, VII, 463; 1 Pinney's Reports, 36, 50.





*P. L. Miller*







jamin Kurtz by name, participated in this long itinerary, enjoyed its novelties and braved its hardships. This son was born in Gettysburg, Pennsylvania, May 6, 1830, and received the name of his maternal grandfather, Benjamin Kurtz. The father of this last came to America from Germany as a missionary to that stalwart Lutheran emigration from the Palatinate, which peopled the fairest valleys of the American Atlantic waterways at the expense of the valleys of the Rhine and of the Neckar.†

When the Millers arrived in Milwaukee, May 10, 1839, the village, excluding the west side of Kilbourntown, contained scarcely one thousand inhabitants.‡ The subject of this sketch, who for now almost sixty years has known no other home than Milwaukee, has seen his adopted municipality become a metropolis of more than a quarter of a million people. Few, very few, now survive therein, whose recollections span so extended a period of the city's existence or are so graphically narrated. Mr. Miller's boyhood comforts and luxuries were pork and salt-beef; his daily stints were in primitive schools; his Sunday instruction in no broad-aisled churches; he saw severed from their roots the forest trees that flourished where the postoffice now stands; he followed Indian trails which, from all directions, focused at the trading tents of George H. Walker and Solomon Juneau; he knew the Huron street bluff, then fifty feet above the water level, as the burial place of the Pottawatamies; the old frame courthouse upon the square was a familiar object; the government lighthouse in the center of Wisconsin street met his daily gaze; to his boyish recollections the third ward, south of Michigan street and West Water street, were water, and half of the fifth ward was a marsh.

But opportunity and occasion for different and broader knowledge came with his approaching maturity. Mr. Miller's father, who was a graduate of Washington college, Pennsylvania, in the class of 1819,\* was anxious for like educational preferment for his son. The latter,

†Cobb's "The Story of the Palatines."

‡The first census of Wisconsin was taken in 1836. Milwaukee upon the east side then had 778 inhabitants. Buck's "History of Milwaukee," I, 262.

\*I Pinney, 49.

therefore, was fitted for college, having the private instruction of the Rev. Alfred L. Chapin, D. D., later the president of Beloit college(1). Mr. Miller entered the freshman class of Washington college in 1846, pursuing the classical course. He continued a student at that institution until nearly the close of his junior year. Being then, to use his own expression, "too poor to continue," he returned home.

He began immediately the study of law under the tutelage of his father, Judge Miller, who, on June 12, 1848, upon the admission of Wisconsin to statehood, had been appointed by President James K. Polk judge of the district court of the United States for the district of Wisconsin(2). Mr. George S. West, the clerk of this court, appointed Mr. Miller deputy clerk August 1, 1848. Under his father's instruction and with the advantages arising from contiguity to the courts Mr. Miller's advancement was uninterrupted, and he was admitted to the bar May 6, 1851, upon the day that he became twenty-one years of age. On July 10, 1851, upon the resignation of Mr. West, and upon the recommendation of the ablest lawyers then in practice, Mr. Miller was promoted to be clerk of the same court(3). The United States court room was then in the fourth story of Martin's block, on the southeast corner of Wisconsin and East Water streets(4), and Mr. Miller's home was then with his father at the northeast corner of Wisconsin and Jackson streets(5), the present residence of Dr. N. A. Gray.

While Mr. Miller was clerk of the district court he affixed his name officially to the warrant which, on July 11, 1854, issued for the arrest of Sherman M. Booth "for aiding and abetting and assisting the escape

(1) Dr. Chapin began to preach in Milwaukee—in the basement of the First Presbyterian church—May 1, 1843. He was president of Beloit college from 1850 to 1886, and died in Beloit, July 22, 1892. Wight's Old White Church, 16, 21.

(2) 1 Pinney, 50.

(3) The petition for his appointment was signed by N. J. Emmons, E. G. Ryan, George W. Lakin, L. H. Cotton, James S. Brown, Samuel Crawford, J. E. Arnold, Thomas Hood, H. S. Orton, and Asahel Finch. The sureties on Mr. Miller's official bond were George S. West and Cyrus Hawley.

(4) Milwaukee Directory, 1851, 1852, page XXXI.

(5) Milwaukee Directory, 1851, 1852, page 106.

of Joshua Glover from the custody of" a deputy marshal(6). The litigation in the highest state and federal courts which followed this arrest became causes celebres in the jurisprudence of the United States(7).

As clerk of the United States district court Mr. Miller served for almost six years, until his resignation on February 2, 1857. One instance, among others, of that good citizenship which has always been one of his characteristics, belongs to this period. He was one of the incorporators, in 1852, of the Young Men's Association of Milwaukee. Under this designation and under other names this institution had led a precarious life for a number of years, making frequent appeals to the public for its support(8). During Mr. Miller's directorship and with his active promotion the association was incorporated(9), and thus placed upon a basis of permanence. For twenty-five years the Young Men's Association was an important factor in the literary development of Milwaukee, and only yielded up its influence when a still wider field of activity presented itself. Its library of about twelve thousand volumes became the nucleus of the Milwaukee Public Library, which was formed March 8, 1878(10).

Mr. Miller's resignation as clerk of the United States district court had been occasioned by his entering, in January, 1857, into a partnership for the practice of law—a partnership which continued undissolved for more than a quarter of a century.

The firm of Finch & Lynde had been established in Milwaukee in 1842, composed of Asahel Finch and William Pitt Lynde(11). This

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(6) Ex parte Sherman M. Booth, 3 Wisconsin, 146.

(7) See Re Booth, 3 Wisconsin, 1; ex parte Booth, 3 Wisconsin, 145; Re Booth and Rycraft, 3 Wisconsin, 157; United States vs. Booth, 18 Howard, 477; Ableman vs. Booth, 18 Howard, 479; United States vs. Booth, and Ableman vs. Booth, 21 Howard, 506; Ableman vs. Booth, and United States vs. Booth, 11 Wisconsin, 498; Arnold vs. Booth, 14 Wisconsin, 180.

(8) Thus, in the Milwaukee Sentinel of January 25, 1848: "The Young Men's Association has appointed a committee to wait upon the young men of the city generally to obtain their signatures to the constitution of the association."

(9) Laws of 1852, chapter 97, approved March 8, 1852.

(10) Under authority of Laws of 1878, chapters 6 and 7.

(11) Western Historical Company's "History of Milwaukee," 666.



firm was an aggressive force in Milwaukee for nearly fifteen years. On January 1, 1857, it opened(2) to receive as partners Henry Martyn Finch, a nephew of the senior member, and Benjamin K. Miller, each of the four to receive one quarter of the net earnings. The new firm was first entered in the city directory as "Finch, Lynde & Miller, attys., 6 and 8 Albany building"(3). But its second appearance in the directory(4) was in the form of Finches, Lynde & Miller, a name which became very familiar to the profession throughout the city and state, which as the firm designation remained unchanged until 1890 and which as a historic legend is still lettered upon the office doors. In a sketch of Mr. Asahel Finch, published(5) in 1881, his firm was stated to be "not only the oldest law firm in the city, but the oldest in the United States."

Prior to the establishment of this partnership Mr. Miller, on September 3, 1856, married Isabella Peckham. This lady was the daughter of George W. Peckham, a banker and a lawyer in Milwaukee. As a banker he had been the president of the Bank of Commerce; in the profession he had been for a time a partner of Francis Bloodgood (6). Mr. Peckham built a family residence on Marshall street, south of Division street (now Juneau avenue), which in or about 1863 became by purchase the homestead of his son-in-law, Mr. Miller. Much rebuilt and modernized (7) it

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(2) Buck's "History of Milwaukee," II, 96.

(3) Erving, Burdick & Co.'s Directory for 1857, 1858, page 78. The Albany stood on the southeast corner of Michigan street and Main street, now Broadway. It was destroyed by fire March 1, 1862.

(4) Smith, DuMoulin & Co.'s Directory for 1858, page 79.

(5) Western Historical Company's "History of Milwaukee," 666.

(6) Mr. Peckham was brother of Mrs. Henrietta L. Colt, mother of Mr. Bloodgood's wife, Josephine M. Bloodgood. Mr. Peckham was father of Geo. W. Peckham, librarian of the Milwaukee Public Library. Also, he was brother of Judge Rufus W. Peckham, of New York, who was father of Wheeler H. Peckham, of New York, and of Rufus W. Peckham, formerly judge of the court of appeals of New York, now justice of the supreme court of the United States.

(7) Buck's "History of Milwaukee," IV, 116. In the interval between his marriage and his purchase of the Peckham house Mr. Miller had resided on Cass street, near Division street.

is still, as number 559 Marshall street, Mr. Miller's dwelling. Here his wife, the mother of his three surviving sons, died June 10, 1864. On February 19, 1869, Mr. Miller married Annie McLean Smith of St. John, New Brunswick, the mother of his only daughter.

The law firm auspiciously established in 1857 became immediately prosperous, and has absorbed much of Mr. Miller's attention until recent years. Indeed, until very lately, he has shaken off but little responsibility upon younger shoulders. The earliest case of the new firm reported in the Wisconsin decisions was that of *Elmore vs. Hoffman and others*(1), decided during the January term, 1858. Finches, Lynde & Miller appeared for the defendants, appellants, and secured a reversal. From that date onward for forty years but one volume of Wisconsin decisions fails to contain reports of causes argued in the supreme court of the state by them and by their successors.

The first break in this quartette was caused by the death, April 4, 1883, of Asahel Finch(2). In less than a year, on March 27, 1884, Henry Martyn Finch died(3), and on December 18, 1885, died Mr. Lynde(4). In the last named year Mr. Miller's two eldest sons—Benjamin K. Miller, Jr., and George P. Miller—were admitted to the firm, the name not changing. In 1890, upon the admission of George H. Noyes (who retired from the position of judge of the superior court for that purpose) the old name ceased to be actively employed. The designation became, and until 1892 continued to be, Miller, Noyes and Miller. George H. Wahl having joined the partnership in that year, the name has since been Miller, Noyes, Miller & Wahl.

As already intimated the clientage of the firm which began as Finches, Lynde & Miller has always been large. The number of its causes, litigated and otherwise, including the matters long since settled and relegated to the "office morgue," has aggregated more than twenty thousand. In many of these proceedings large pecuniary interests were

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(1) 6 Wisconsin, 68.

(2) Buck's "History of Milwaukee," IV, 412.

(3) 60 Wisconsin, LXVI.

(4) 66 Wisconsin, XXIX.

involved, as well as important principles of law embodied. Especially has this been so as regards the properties of decedents. The estates of Governor Cadwalader C. Washburn, Alexander Mitchell, Edward H. Brodhead, Nathan Engelmann, George Burnham, Eliphalet Cramer, George W. Allen, Edward H. Ball, John G. Flint, George G. West, Enoch Chase, Horace Chase and John Ogden are instances of the estates which have passed through this office, the orderly and skillful handling of which appertained to Mr. Miller. Indeed his specialty has always been the office department of the firm's business. Rarely in court, still more rarely personally engaged in the trial of a cause, Mr. Miller's energies have found their most congenial activity, have realized their most brilliant successes in the unraveling of tangled estates, in the solution of complicated questions concerning trusts, in the promotion of far reaching business interests, in rescuing tottering firms from their too greedy creditors, in negotiating peace among quarreling kinsfolk, in all the varied diplomacy which would have made a large modern law office the delight of a Tallyrand or a Metternich.

Mr. Miller has been counsel for interests, especially as to trusts, in the estates of most of the wealthy citizens of Milwaukee; moreover, in the days of the bankruptcy law, the transactions of the firm in that delicate specialty were very important. The insolvent business of Pierce & Whaling, the Milwaukee Iron Company, John Nazro, the Wisconsin Leather Company, the Engelmann Transportation Company, and the Rock River Insurance Company were settled by Mr. Miller's capable hands. Besides these matters his firm represented the many creditors holding bonds issued by the municipalities of Milwaukee, Racine, Kenosha, Janesville, Beloit, Sheboygan, Watertown, Fond du Lac, Oshkosh, Green Bay, in fine by every city or county in the state which put out obligations in aid of railroads. As to railroads themselves, Mr. Miller's firm were attorneys of the Milwaukee & Prairie du Chien Railroad Company, the La Crosse & Milwaukee Railroad Company, and the Milwaukee & Saint Paul Railroad Company before these corporations as a united entity under a new name arrived at the dignity of a special force of solicitors. In more recent years the same firm were



attorneys for the receivers of the Northern Pacific Railroad Company until conflicting interests were adjusted and the road sold. Cases such as *Dows vs. National Exchange Bank of Milwaukee* (1), *Dows vs. Wisconsin Marine and Fire Insurance Company* (2), *Scott vs. West* (3), *Burnham vs. Burnham* (4), *McLaren vs. The First National Bank of Milwaukee* (5), *Van Steenwyck vs. Washburn* (6), *The First National Bank of Monroe vs. Edgerton* (7), *The Farmers' and Millers' Bank of Milwaukee vs. Eldred* (8), *Blair vs. The Milwaukee & Prairie du Chien Railroad Company* (9), *Price vs. Wisconsin Marine & Fire Insurance Company* (10), and *Akerly vs. Vilas* (11) are but examples of the important causes argued by the advocates of this firm, where, nevertheless, the public appearance in court was efficiently supplemented by the work and advice of the silent man in the office.

A lawyer thus absorbed in affairs so congenial to his tastes finds little leisure, however sincere his interest for public affairs. A democrat in politics, Mr. Miller was keenly regardful of the momentous questions which aroused the country and divided its citizens during his mature years, yet he never sought or held political positions. For two terms in 1872-3 and in 1873-4 he was alderman of the seventh ward of Milwaukee. Aside from this trust he has never held office (12).

It can well be imagined, however, that a lawyer so deft and ready

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(1) 91 United States, 618.

(2) 91 United States, 637.

(3) 63 Wisconsin, 529.

(4) 79 Wisconsin, 557.

(5) 76 Wisconsin, 259.

(6) 59 Wisconsin, 483.

(7) 56 Wisconsin, 87.

(8) 20 Wisconsin, 196.

(9) 20 Wisconsin, 254, 262.

(10) 43 Wisconsin, 267.

(11) 15 Wisconsin, 401; 21 Wisconsin, 88, 377; 23 Wisconsin, 207, 628; 24 Wisconsin, 165; 25 Wisconsin, 703.

(12) While an alderman he was one of a committee, of which were Mayor D. G. Hooker, Alderman Levi H. Kellogg and Jacob Velten, of the board of public works, besides himself, to examine the sewage system of St. Louis, Rochester, Brooklyn and Chicago, with the view of selecting the most satisfactory system for Milwaukee. Buck's "History of Milwaukee," IV, 227.

in the orderly manipulation of affairs should be frequently sought for the directory of large financial institutions. This has been pre-eminently the case as respects Mr. Miller. He was a charter member of the Milwaukee Club and of the Hotel Pfister, and as a director took a leading part in the erection of the two buildings—neighbors and neighborly to each other—occupied by those two corporations. Under a now abandoned regime, he was for a long period a director of the Milwaukee Gas Light Company. He is a trustee and member of the executive committee and of the finance committee of the Northwestern Mutual Life Insurance Company, vice president of the Milwaukee Cement Company, director of the First National Bank of Milwaukee, director of the Wisconsin Telephone Company and director of the Long Distance Telephone Company. To the profitable and flourishing condition of the corporations with which Mr. Miller is now actively connected his energies, wisdom and experience have largely contributed.

Nor have these qualifications been withheld from the service of institutions whose aims have been rather benevolent and educational than for purposes of profit. Mr. Miller attended the meetings held at the Newhall House preliminary to the organization of the Milwaukee academy in August, 1864, and was a member and the first secretary of its board of trustees. This school for the education of boys, which became the Markham academy in the summer of 1877 (1), has always had the benefit of Mr. Miller's active interest. For a long period he has exerted a lively and practical influence over the affairs of the Wisconsin general hospital and of the Wisconsin training school for nurses; he is chairman of the gratuity fund of the Milwaukee Chamber of Commerce, and is the president of the Milwaukee bar association.

The mention of this last position—fit recognition of the regard entertained for Mr. Miller by his brethren of the profession—suggests the recording of a recent graceful action by him for the benefit of the lawyers of Milwaukee. Although the firm, with which he has been and is connected, has always paid careful attention to the completeness and

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(1) Western Historical Company's "History of Milwaukee," 549. The original name, Milwaukee academy, has again been adopted by this school.

excellence of its professional library and has one of the largest and best selected collections of reports and text books in the United States, yet all its members have uniformly been interested in the Milwaukee law library association. This Mr. Miller's firm assisted in organizing on November 18, 1860. The depth of Mr. Miller's regard, which has continued more than thirty-seven years, was shown at Christmas, 1895, when, as a memorial of his deceased partners, Asahel Finch, William Pitt Lynde and Henry Martyn Finch, he presented to the Law Library Association the sum of five thousand dollars, to be applied in the purchase of statutes, text books and digests to "make the library of greater value to the members of the profession" (3). The result thus sought by Mr. Miller has been accomplished, as is evidenced by the increasing number of students, especially young lawyers, who now enjoy the privileges of the books. A marble bust of Mr. Miller, executed by Trentanove and presented by attorneys of Milwaukee to the association, now adorns the rooms of the library.

Mr. Miller's religious affiliations have been with the Protestant Episcopal Church. His father, Judge Miller, a Scotch Presbyterian by descent (4), continued his attachment to the Presbyterian church when he removed to Milwaukee. Judge Miller assisted in the reorganization of the First Presbyterian church February 10, 1840 (5), and was a trustee of the society of that church as late as February, 1844 (6). He joined St. Paul's Episcopal church in 1849 (7). His son, Benjamin K. Miller, although by maternal descent of pronounced Lutheran stock (8), followed his father into the Episcopal communion. He was for a long period a warden of St. Paul's church, and his activity as well as taste was enlisted

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(3) Extract from his letter of December 24, 1895, to Samuel Howard, president of the Milwaukee Law Library association.

(4) Judge Miller Memorial Volume, page 5.

(5) Wight's "The Old White Church," 12.

(6) As appears from his signature as trustee, under date of February 6, 1844, to still existing bills of sale of pews in the First Presbyterian church.

(7) Miller Memorial Volume, page 18.

(8) Mr. Miller's maternal great-grandfather, the Rev. John Nicholas Kurtz, was born in October, 1722, in the principality of Nassau-Weilburg, Germany, of an ancient Protestant family. He studied theology at Giessen and Halle, and in 1745 came



in the erection of its present stately edifice (9). He has also been one of the managers of Forest Home cemetery, which was established in 1850 by the vestry of St. Paul's church, and is controlled by a committee of that body.

As has before been suggested, Mr. Miller has never been an advocate, a trial lawyer, in the courts. His work has been done, his power exerted, his influence wielded, his success achieved, in the office. For this quieter forum his mental qualities peculiarly fit him. Yet his partners who contended at the bar and before the jury have gained confidence for their conflicts and have added fibers to their eloquence by consulting his judgment. Persons entrusting their perplexities to his management and relying upon his sagacity feel no sense of fear as they roll upon him the burden of responsibility. Through all his career Mr. Miller has been cool, conservative, careful, cautious, yet courageous. It is probably true that as trustee, guardian, executor, administrator—and he often acts in these fiduciary capacities—he has never lost a dollar of funds committed to his keeping. Loyal to the interests of his clients, prompt in the settlement of affairs, frank in his dealings, fertile in resources, versatile, firm, aggressive, self-assertive, an apt counselor, a quick and skilled adviser, a faithful trustee, he is a brilliant type of that increasing body of lawyers who find their highest success in the quiet diplomacy of the office rather than in the uproar of litigation.

#### FREDERICK C. WINKLER.

Frederick C. Winkler was born in Bremen, Germany, March 15, 1838, where his parents, Carl and Elizabeth (Overbeck) Winkler, then resided. In 1842 Carl Winkler emigrated to the United States and

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to America as a licentiate missionary to the Germans in Pennsylvania. He was ordained to the ministry in 1748—the first Lutheran minister ordained in the American colonies. He died May 12, 1794. For the Kurtz family more at length, see Edle's "History of Lebanon County, Pennsylvania;" "Library of Universal Knowledge," sub nom. Kurtz; Hutter's "Eulogy on the Life and Character of Rev. Benjamin Kurtz, D. D."

(9) From the last sermon preached by the rector of St. Paul's church in the old building it appears that the first proposal to advertise for lots upon which to erect a new church building was made by the junior warden, Mr. Miller, on January 8, 1881.



A. C. Linker

Ridge; joined in the pursuit of the retreating rebels; then joined the expedition for the relief of Burnside at Knoxville. In the spring of 1864 the Twenty-sixth Wisconsin was assigned to the third brigade of the third division of the newly organized twentieth corps under Major-General Hooker. The regiment took part in the four months' campaign to Atlanta, with its many skirmishes and battles, and won reputation as a first-class fighting regiment.

From Atlanta it marched with Sherman to the sea, thence across the Carolinas to Goldsboro, taking prominent part in the battles of Averysboro and Bentonville. From Goldsboro, by way of Raleigh, Richmond and Washington, where it participated in the "grand review," the regiment proceeded to Milwaukee, where it was mustered out June 28, 1865. In the adjustment of honors after the close of the war, Colonel Winkler was brevetted Brigadier General of Volunteers by the war department.

He resumed the practice of his profession immediately after being mustered out of the service. In 1867 he formed a partnership with Mr. A. R. R. Butler, which continued until 1874, when the firm of Jenkins, Elliott & Winkler was organized. Mr. A. A. L. Smith afterward became a partner, and still later Mr. E. P. Vilas was admitted to the firm. Upon the appointment of James G. Jenkins as a United States district judge, the present firm of Winkler, Flanders, Smith, Bottum & Vilas was organized.

In politics General Winkler is a stanch republican.

In 1864 he married Miss Frances M. Wightman, by whom he has six daughters and three sons.

#### EPHRAIM MARINER.

Few lawyers in the state present such a remarkable combination of business ability and legal acumen as Ephraim Mariner. He was born at Penn Yan, Yates county, New York, on the 27th of March, 1827, the son of Miles and Mellicent (Seelye) Mariner. Mr. Mariner's father was a carpenter and contractor, a man of stanch character and of moderate means. The matter of educating his children assumed the first importance in his mind. Consequently, Ephraim attended the public





*E. Mariner*





schools of his native town, finished preparing for college under the instruction of a private tutor, and in 1846 entered Hamilton college. He was graduated from that institution in 1849, studying law in course and as an extra study with the noted Professor Dwight. Subsequently he entered the office of Evert Van Buren, a prominent lawyer of Penn Yan, but becoming imbued with the western fever, decided to complete his preliminary legal education and obtain a foothold in Milwaukee. To this point he therefore came in 1850, and became a student in the office of Coon & Hunter, being admitted to the bar during the succeeding year (1851).

From that time to the present, with the exception of about five years, Mr. Mariner has practiced alone. In 1852-3 he was associated with Charles James, the firm being James & Mariner, and in 1872-6 he was the senior member of the firm of Mariner, Smith & Ordway. Mr. Mariner commenced his career as a general practitioner, but later, with the development of the city, his unusual abilities in the fields of business and finances led him to concentrate his energies upon the law as it especially relates to real estate and corporations. And he not only became identified in his legal capacity with the early railroads and various real estate enterprises, but invested money with caution and foresight.

Thus, at different times, Mr. Mariner has been connected with the old La Crosse, the North-Western and the Milwaukee & Northern railways. He has been a director of the First National Bank, of Milwaukee, and director and president of the Green Bay & Mississippi Canal company. To those who know him best, it need not be said that whatever Mr. Mariner has undertaken to do, has been accomplished with faithfulness and thoroughness, and that, primarily, he is a man of actions and one who attends strictly and successfully to whatever business he has in hand. It may perhaps be superfluous to add that these traits, which have ever been uppermost in his character, have brought him both wealth and honor.

Mr. Mariner was married in November, 1850, to Lucinda Watkins, of Waterloo, New York, by whom he has had two sons, William and John.



## DANIEL H. CHANDLER.

Daniel Hicks Chandler was the first reporter of the supreme court of the state of Wisconsin. His four volumes cover the years 1849-52. The fact that the cases reported by him have been re-reported by Mr. Pinney causes his name to be less familiar to the lawyers of this generation than it would otherwise be.

Mr. Chandler was born in Granville, New York, October 20, 1795; was admitted to the bar of the supreme court of that state in 1818. He was a man and lawyer of prominence in Genesee county, New York, having held there the offices of district attorney, master in chancery and judge of the court of common pleas. He was strong both as a pleader and advocate. It is said of him in a New York paper published soon after his death that few lawyers were listened to at the bar of the old supreme court and in the court of chancery with more respect. In the political and social circles of "old Genesee" Judge Chandler long occupied a foremost post, his unfailing kindness and good humor winning and retaining for him hosts of personal friends. Few men were more free from petty jealousies and animosities, and few leave behind them a larger number of acquaintances who treasure and honor their memory.

Mr. Chandler came to Wisconsin as early as 1849, and settled in Milwaukee. He is said by an eminent lawyer of that city to have brought with him some reputation as a New York chancery lawyer. He seems to have acquired a fair business in Milwaukee, judging from the fact that his name appears as attorney in four cases in volumes two and three of Pinney's reports. It may also appear in later volumes of the Wisconsin reports. His death occurred March 28, 1864, he then being a patient in the state hospital.

## S. PARK COON.

Squire Park Coon was born March 28, 1820, in the town of Covington, Wyoming county, New York. He was educated at a local academy and at Norwich University, in Vermont. He began the practice of the

law in his native state. In 1843 he located in Milwaukee and entered upon the practice of his profession. He was the second attorney general of the state, serving from January 7, 1850, until January 5, 1852; he was also the district attorney of Milwaukee county in 1863-4. In 1862 he was appointed colonel of the Second Wisconsin regiment, but did not long serve in that capacity; he served thereafter, for a time, on General Sherman's staff. Mr. Coon died in a Milwaukee hospital, October 12, 1883. Whisky ruined him. A short time before his death he was found in abject poverty, and but for the kindness of a few men who knew him in earlier days would probably have died for lack of food and attention.

#### ASAHEL FINCH, JR.

Asahel Finch, Jr., who passed away April 4, 1883, was at the time of his death a member of the oldest law firm at the Milwaukee bar, his partnership with William Pitt Lynde being probably the longest continued law partnership in the history of the western bar. Entered into in 1842 the partnership between Mr. Finch and Mr. Lynde continued uninterruptedly for more than forty years, each of the partners achieving unusual distinction at the bar of Milwaukee and attaining a high rank among the lawyers of the state. Mr. Finch, who was a native of New York state, was born at Genoa, Cayuga county, February 14, 1809, and came of as brave and hardy a race of pioneers as ever contributed to the upbuilding of new communities or commonwealths. His parents came originally from Orange in the same state, but his paternal grandfather resided in Pennsylvania and was one of the victims of that terrible massacre which occurred in the Wyoming valley in 1778.

Reared in the midst of those rural environments which seem to contribute in a remarkable degree to the development of the best type of American manhood, inheriting from his ancestry high courage and indomitable will power, Asahel Finch, Jr., was admirably fitted by nature for an active and useful career among the pioneers of the northwest. His early education was received in the common schools of the neigh-

borhood in which he was brought up, and in his young manhood he attended school at Middlebury academy in Genesee county.

He was married, in 1830, near Rochester, New York, to Miss Mary De Forest Bristol, a native of Connecticut, and almost immediately thereafter was carried westward with the tide of immigration as far as Michigan. Locating at Tecumseh, he engaged for three years in mercantile business, when, having a love for the law, he removed to Adrian, and entered the office of Orange Butler of that city as a law student in 1834. While reading law he took an active interest in public affairs, was elected to the Michigan legislature, and while serving in that body aided materially in bringing about a settlement of the boundary line dispute between Michigan and Ohio, which at one time threatened to involve the two states in armed conflict.

He was admitted to the bar in 1838, and in the fall of the following year he came to Milwaukee and began his professional career there, a well-seasoned and well-informed man, whose experience as a man of affairs had added materially to his qualifications for successful practice. For a short time he was associated professionally with H. N. Wells and Colonel Hans Crocker, under the firm name of Wells, Crocker & Finch, and his first change of associates resulted in the formation of the partnership with Mr. Lynde, which continued up to the time of his death, B. K. Miller and H. M. Finch becoming partners in the firm in 1857, the firm thus constituted continuing in existence twenty-seven years under the name of Finches, Lynde & Miller.

It is the judgment of Mr. Finch's professional contemporaries, only a few of whom are now living, that the firm of which he was for more than forty years the head, had, during his life, as large, varied and important a law practice as any firm in the state or within the broader limits of the northwest. The books of the firm, still preserved, testify to the fact that during the four decades of his active practice the firm had to do with more than ten thousand suits in courts of record, many of them involving large amounts of money, valuable property interests and important questions of law. Of Mr. Finch's character and ability as a lawyer and his worth as a man and a citizen, no more correct esti-



mate could be made than found expression in the closing words of a sketch of his career presented to the Wisconsin state historical society. Writing of him in this connection, one who had known him intimately for many years said: "For over forty years Mr. Finch was in constant and successful practice, meeting not only all the able lawyers in the west as opponents at the bar, but some of the most distinguished members of the legal profession from the east who had been sent to Wisconsin to look after the interests of non-resident clients. He seldom found himself overmatched. He was always regarded as an able and upright lawyer, with such a sense of justice, such a conscientious regard for the right, and such a strict fidelity to the highest ideals, that it was said of him that no amount of money could secure his services for the wrong side. His professional habit gave the lie to the oft-repeated assertion that a lawyer can be hired to undertake any kind of a case provided the fee is large enough. He had no sliding scale of morality that excused a member of the legal profession for doing what was considered dishonorable in other men. If the law made it a crime to secrete stolen goods, he held it to be wrong to aid the real thief to escape by the technicalities and loop-holes of the statute. He was one of the kind that could not be hired to defend a confessed criminal to defeat the ends of justice. His conception of the proper function of jurisprudence in modern civilization was to secure the highest good attainable by organized society.

"He had such an extensive practice that his clients were not impoverished by his charges after he had won their suits. He often refused to prosecute poor men. He aided in the settlement of more disputes by arbitration outside of the courts than any other man ever in practice in Milwaukee. He often put aside large prospective fees for himself and his firm by advising belligerent litigants to keep out of court. Had Diogenes gone among the members of the bar with his lantern, in search of an honest lawyer, he would have put out his light and returned home satisfied after meeting Asahel Finch.

"In politics he was a whig, being once whig candidate for Congress, and he always adhered to that party until it was dissolved after the dis-

astrous defeat of General Winfield Scott in the well-remembered campaign of 1852. He aided in the formation of the republican party when the attempt was made to carry slavery into the new territories of the west, under the Dred-Scott decision of the supreme court and the repeal of the Missouri compromise act, and supported John C. Fremont for President in 1856. And when the south finally rebelled and attempted to dissolve the Union by an appeal to the bloody arbitrament of the sword, Mr. Finch supported the government with voice, pen and purse to the best of his ability.

“When Mr. Finch settled in Milwaukee, religious societies were to be organized out of the discordant elements that are always present in new countries; churches were to be built with the scanty funds gathered by the contribution box; preachers were sent out by home missionary societies at the east, and the slow and tedious process of laying the foundations of a great commonwealth was commenced. In all this grand work Asahel Finch took an active and prominent part. Probably it is safe to say that no layman ever set foot on the soil of Wisconsin who helped the churches of all denominations, in proportion to his means, as liberally as he. He was an early communicant of the Plymouth church of Milwaukee, and for forty years was its steadfast friend, through all its vicissitudes and trials, supporting it cheerfully with voice and material aid. Although a strict Congregationalist and a stanch defender of the democratic form of church government, he was neither bigot nor partisan in religion, but recognized the upright man as his brother, no matter how much his creed differed from his own. His donations for the support of religion were scattered freely among all evangelical denominations that needed help, and many an impoverished society was indebted to his generosity for assistance in time of keen distress. His public benefactions did not divert his attention from the claims of the destitute in the humblest walks of life. He delighted in relieving the wants of the poor without letting one hand know what the other did. His good deeds are not all known except to the God whom he tried to serve; and like Abou Ben Adhem, he served Him best by ‘loving his fellow-men.’ He never asked ‘Who is my neighbor?’ nor ‘Am I my







Nelke & Co. Publishers.

*Wm. Dyke*

brother's keeper?" but tried 'the luxury of doing good.' In the dark and cruel days of slavery his ear was ever open to the cry of the black man in bondage, and he became an active director on the underground railway, whose terminus was on Mason and Dixon's line in the south and in Canada on the north. Many a trembling fugitive, fleeing from his cruel taskmaster, was aided on his hazardous journey toward the north star by a friend on the shore of Lake Michigan whose name he had never heard. He remembered those in bonds as bound with them. In short, he followed in the footsteps of his Master as nearly as he could."

That the pioneers of Milwaukee were men of strong character and of far more than ordinary ability is a fact which impresses itself upon every student of the city's history, and in this community Asahel Finch for many years wielded a commanding influence. Quiet and mild mannered in his demeanor, he was resolute, forceful, earnest and notable among his contemporaries for his capacity for organized and systematic effort. His public-spirited interest in everything calculated to develop and build up the city was a marked feature of his career, and he was one of the most prominent of the men who conceived the idea of building the pioneer railway of Wisconsin, secured the charter authorizing its construction, and in various ways materially aided the enterprise. Generous in his impulses, philanthropic by nature, and kindly in his intercourse with all classes of people, his beneficent existence was one to be contemplated with pleasure, and studied with profit by the present generation of his successors at the bar and in other walks of life.

The only surviving member of Mr. Finch's family is his daughter, Mrs. Mary Finch Papendiek, who is still a resident of Milwaukee.

### JOHN HENRY VAN DYKE.

John H. Van Dyke is a typical pioneer of Milwaukee, cautious, thorough, charitable, far-sighted, cultured and substantial in every phase of his character. He well represents the element which has made Milwaukee not only a great business center but the ideal residence city of the west. He stands for the faithful pioneers who have given it a char-



acter which is as unique as it is pleasing; whose sons and daughters have never wandered permanently from their native place, thereby giving the city an air of mellowness and repose, which is an unusual trait of the western municipality.

John H. Van Dyke was born in Mercersburg, Franklin county, Pennsylvania, on the 17th of October, 1823. As his name implies, he is of Dutch descent, and it is not strange, remembering the famous artists of Holland who have borne the family name, that he should have possessed such artistic tendencies and should have so persistently cultivated them. As a connoisseur Mr. Van Dyke has a national reputation, his private collection of art works having few equals in the United States.

At the basis of Mr. Van Dyke's artistic tastes and talents, however, is the solid character of the shrewd, cautious, able and successful lawyer. These traits of character have enabled him to give an invaluable impetus to the practical movements of art and charity which have given Milwaukee such a noteworthy stamp of culture and high life. Tradition says that at an early day his family was financially interested in the Holland grants of New York. William Van Dyke, his father, was of that Dutch element which made Pennsylvania a great commonwealth, settling at an early day in Franklin county. Before his death he was one of the most prosperous men of that section, being at first proprietor of several tanneries and, later in life, the owner of productive farms.

Mary Duncan Van Dyke, the mother, was of Scotch-Irish descent, many of her kith and kin locating in the Cumberland valley, near Carlisle. As, therefore, Mr. Van Dyke has woven into his personality the racial traits of the Dutch and the British, the main characteristics of his nature are accounted for. He received a thorough education at his native town, Mercersburg, passing through the district schools and taking a higher course at Marshall college. Graduating from the latter institution at the age of eighteen, he removed to Detroit, Michigan, where his brother, James A. Van Dyke, was engaged in the practice of law in partnership with Mr. Harrington. Thus he commenced his legal studies, and, upon the death of Mr. Harrington, he continued them in the office of the firm subsequently formed under the style of Van Dyke



& Emmons (H. H.). It may be here stated that the latter was afterward appointed United States judge of the circuit comprising Michigan and adjoining states.

In April, 1846, soon after his admission to the supreme court of Michigan, John H. Van Dyke removed to Milwaukee, in company with Norman J. Emmons, a brother of H. H. Emmons, with whom he had formed a partnership. The two young men arrived in Milwaukee on the 17th of April, 1846, and at once became a forceful factor in its affairs. The firm of Emmons & Van Dyke continued in busy practice for some years before receiving another partner, in the person of C. A. Hamilton. Under the name of Emmons, Van Dyke & Hamilton this association continued until 1870, when Mr. Van Dyke himself retired from the firm.

These were truly busy and prosperous years, as a cursory glance at the reports of the Wisconsin supreme court and those of the United States supreme court will abundantly testify. In the records covering that period there are few law firms in Wisconsin whose names oftener appear than those of Emmons & Van Dyke, and Emmons, Van Dyke & Hamilton. The firms did a general law business, being especially prominent in suits involving questions of admiralty and equity.

Mr. Van Dyke's retirement was occasioned both by the fact that he had amassed a competency, and that several enterprises in whose management he had engaged had expanded to such dimensions as to absorb a large portion of his time and strength. This was especially true of the Northwestern Mutual Life Insurance Company. In the inception of the company he had been chosen a member of its board of trustees, had taken an active part in its affairs and assisted in developing it to the dimensions of one of the most important corporations in the United States. He served as president of the company from 1869 to 1874, his retirement from the active practice of law dating, as stated, from 1870.

It would be impossible to go into details regarding the numerous positions of trust which have been filled by Mr. Van Dyke. A simple, but by no means perfect list of them includes the first presidency of the Young Men's Literary Society, which in later years became the Milwaukee Library; a member of the board of visitors of the Milwaukee

hospital since its organization, in 1864, being chosen to the presidency to succeed Alexander Mitchell, upon the death of the latter; a member of the advisory board of counsel for the Milwaukee orphan asylum, and for many years a trustee of the Milwaukee female college, being for several years president of its board; member of the board of trustees of Lawrence university, Appleton, and similarly connected with the Layton art college, which he has done so much to raise to its high plane.

Mr. Van Dyke has also been a leader in the development of the mining industries of Wisconsin. He has been director and vice president of the Menominee mining company, the pioneer iron mining company on the Menominee Range in Michigan and Wisconsin. In 1882 the company sold several of its mines. In 1887 he was president of the Chapin mining company, which subsequently disposed of its property. The Menominee mining company then ceased to do business. The iron mining company, the Pewabic, was organized during this year, Mr. Van Dyke being its vice president. It is located near Iron Mountain, Michigan, and is in active operation.

Although a leader in practical works of charity and ever interested in public affairs; a republican in politics, and a member of the Methodist Episcopal church, he has refused all proffers of political offices, and has been unobtrusive in his religious views.

Mr. Van Dyke's wife was formerly Miss Mary Douglass, she being of Scotch descent, as was his mother. Of their four children, George D. and William D. Van Dyke are members of the law firm, Van Dyke, Van Dyke & Carter, of Milwaukee. John H. Van Dyke, Jr., the third son, is conducting the Van Dyke knitting works. Mary E. Van Dyke is the wife of John H. Tweedy, Jr., the son of another prominent Milwaukee pioneer.

In conclusion, we can scarcely do better than to quote Mr. Van Dyke's own words as to the elements of character which are an assurance of success: "Industry, integrity, will, perseverance and patience are concomitants of success, at the same time guardedly avoiding enterprises of which one is ignorant—which may be styled business prudence, as necessary for success in the legal profession as in any other pursuit in

life." Although couched in general terms the above maxims, applied to the life of John H. Van Dyke, explain its successes and honors.

#### HALBERT E. PAINE.

The public services in field and legislative hall and the removal of Halbert E. Paine from the state has caused him to be unknown to the present generation of lawyers in Wisconsin; indeed, his career at the bar in this state was brief. Mr. Paine was born in Chardon, Geauga county, Ohio, February 4, 1826; he was graduated from the Western Reserve college in 1845; admitted to the bar in 1848, and began practice at Cleveland; came to Wisconsin in 1857, and opened a law office in Milwaukee. He entered the military service in May, 1861, as colonel of the Third Wisconsin; was promoted to a brigadier generalship in January, 1863, and commanded the Third division of the Nineteenth army corps; lost a leg in the service; was brevetted major general in March, 1865, and resigned the following May. On his return home he was elected a member of Congress, and was twice re-elected, serving from 1865 to 1871. He served as commissioner of patents for several years, and thereafter became a resident of Washington, D. C., and engaged in the practice of the law.

#### O. H. WALDO.

Otis Harvey Waldo was born at Prattsburg, Steuben county, New York, April 1, 1822. Until he became seventeen he lived on his father's farm, but attended school and an academy; he graduated from Union college in 1842; notwithstanding the fact that his eyes failed and he was obliged to depend upon his room-mate's reading to prepare for his classes, his standing was high. His sight continued weak for two years after graduation, so that he remained on the family farm doing light work. In the fall of 1844 he went to Natchez, Mississippi; taught school and read law with Gen. John A. Quitman, and in the spring of 1849 he became a member of the Mississippi bar. In the fall of that year he located in Milwaukee and entered upon the practice of the law. He does not appear either to have sought or held public office; he took



an active interest in public matters affecting the prosperity of Milwaukee, and is credited with having been largely instrumental in securing the construction of the Northern railroad to Green Bay via Menasha. "The adjustment of large city indebtedness in long bonds at four per cent was, in a great measure, the result of his efforts, and was the foundation of the present good credit of Milwaukee." After nearly two years of illness he died, October 30, 1874.

"His professional career was neither erratic nor brilliant. He was an industrious, painstaking, studious practitioner, and he was prompted not only by professional pride and ambition but by conscientious ideas of duty to devote the most thorough preparation both to the facts and law of every case intrusted to him, and none were neglected because they were unimportant. Far and wide he was known as the well-read, the clear-headed, sound judging, industrious and persistent lawyer. The most difficult cases were confided to him, and seldom did he lose a case."

#### EDWARD SALOMON.

Edward Salomon was born at Stroebeck, near Halberstadt, in Prussia, August 11, 1828. His parents' names were Christopher Salomon and Dorothea nee Klusmann.

From 1806 to 1815 his father served in the Prussian army during the Napoleonic wars, first as a private, then as an officer, and was severely wounded at the battle of Waterloo. He was decorated with the renowned Prussian iron cross of 1813 and with other decorations for meritorious conduct in the field. Afterwards he held a modest position in the civil service of Prussia until he and his wife, Governor Salomon's mother, came to the United States in 1856. They lived at Manitowoc, Wisconsin, until her death in 1871, and his death in 1872. His father's ancestors were farmers, and his mother's were physicians and clergymen in Germany.

Edward Salomon was educated at college in Halberstadt, and at the university in Berlin in 1848 and 1849, where he pursued mainly mathematics, natural history and philosophy. He came to the United States in the fall of 1849, where his two elder brothers had preceded him. The

oldest, Charles E. Salomon, afterwards colonel and brevet brigadier general of United States volunteers, was a political refugee on account of his participation in the revolution in Prussia in 1848. The second son, Frederick Salomon, was living at Manitowoc, where he also afterwards entered the army during the civil war, and became brigadier general and brevet major general. Edward joined him in that city and taught school, then became county surveyor, and afterwards deputy clerk of the circuit court. In 1852 he removed to Milwaukee and entered the office of Hon. Edward G. Ryan, afterwards chief justice of the supreme court, as a student, remaining in that office until 1858, studying his profession under his kind, able and experienced guidance. Mr. Salomon passed a thorough examination before Justices Whiton, Smith and Crawford of the supreme court of Madison, which was held by them in person at the request of Mr. Ryan. Mr. Salomon was thereupon admitted to the bar January 25, 1855. In 1856 he became a citizen of the United States, and in that year also he entered into a partnership with Winfield Smith, under the firm name of Smith & Salomon, which continued until he left Wisconsin in December, 1869.

On May 14, 1858, he married his wife Elise, nee Nebel, of Liege. They have no children.

The practice of the firm of Smith & Salomon was general, though fortune brought them into some branches of business more particularly than in others. During the operations of the bankrupt law, and those of the laws taxing distilled spirits, the firm had many cases under each, and tried many suits in the United States court at Milwaukee. It was the habit of the firm generally to try together every important case possible for them so to arrange. Their business increased rapidly, and Mr. Salomon's acquaintance with the Germans of Milwaukee brought to him very much business from them. Their practice and business life was always harmonious to a remarkable degree, and they were studious and industrious, so that while they differed in the beginning upon some questions, they usually discussed them to the point of unity.

The first case in the supreme court which fell to Mr. Salomon to argue was that of Roche vs. Milwaukee Gaslight Company, 5 Wis., 55.

holding that the city of Milwaukee was responsible and not Mr. Salomon's client for an injury by his wagon to the plaintiff's lamp post, because of the condition of the street making the injury unavoidable, the principle being important to the parties concerned.

The next important case argued by Governor Salomon in the supreme court was that of *Baumbach vs. Bade*, 7th Wisconsin Reports, involving the constitutionality of the law giving to mortgagors six months instead of twenty days within which to answer foreclosure complaints. Mr. Salomon contended that the statute affected the contract between the parties under the guise of regulating the remedy, but he was overruled.

In 1864 he defended A. G. Miller, United States district judge, before the judiciary committee of the house of representatives at Washington in impeachment proceedings which had been brought and were zealously prosecuted by Hon. Matt. H. Carpenter. The charge grew out of the *Prairie du Chien* railroad litigation. The investigation of the charge before the committee lasted for several months, and resulted in a refusal of the house to entertain them.

*Druecker vs. Salomon*, 21 Wisconsin Reports, page 621, grew out of Salomon's action as governor of the state in enforcing the draft of 1862, causing the arrest and detention of so-called draft rioters in Ozaukee county. In a habeas corpus proceeding the supreme court in 1862 had decided that the proclamation of President Lincoln, under which forcible opposition to the draft was to be tried by court martial or military commission, was unconstitutional and void, and that the rioters must therefore be released from imprisonment under the military authority. Thereupon, after the governor's term of office had expired, the plaintiff, one of the rioters, brought this action for damages against him in the circuit court at Milwaukee for the alleged false imprisonment. His defense was that the so-called riot was more than a riot; was, in fact, an insurrection against the laws of the United States, planned and prepared long before the day of the draft, and that he, as governor of the state, was responsible for its peace, and acting also on the authority of the President of the United States, had taken such measures and used



such force as he deemed necessary for the suppression of this insurrection, and for such action the governor was not responsible in a civil suit for damages. At the trial the facts regarding the insurrection were proven so clearly that the presiding judge, Arthur MacArthur, held the governor's view of the law to be correct, and instructed the jury to render a verdict for the defendant. The case went to the supreme court, where the judgment was affirmed. The governor informs us that he was assisted at the trial by able counsel, Messrs. Matt. H. Carpenter and Winfield Smith, but that he prepared the defense and with their assistance conducted the trial and afterwards with them argued the case in the supreme court.

Another litigation of great importance on account of the questions raised and the amount involved related to the Prairie du Chien railroad company. Two bills were filed by the firm of Smith & Salomon in the United States circuit court in chancery; one was entitled *How vs. the Milwaukee & Prairie du Chien railroad company, et al., defendants*, and the other *Louis F. Meyer, et al., vs. the same*.

The legislature of 1867, notwithstanding protests and arguments made by Governor Salomon and others in opposition, had passed an act, Chapter 435 of the local laws of 1867, affecting the rights of certain stockholders. While the bill was pending in anticipation of its passage, notwithstanding the frequent and protracted arguments of Mr. Salomon before the committees of the legislature, he prepared a bill in chancery asking an injunction against the enforcement of that statute, which bill was filed on the day following the approval of the act of the legislature.

While Mr. Salomon was in Madison, his partner, Mr. Smith, had spent some weeks in preparing another bill filed about the same time seeking also an injunction to prevent the execution of certain resolutions and acts adopted by the directors of the Prairie du Chien railroad company, and others, of which bitter complaint was made. The argument upon the first, or *How* bill, was brought on and lasted for several days during May, 1867. It was closed by a decision in favor of the plaintiffs on nearly all the points, awarding the injunction as prayed for by

the bill, constituting a complete remedy satisfactory to the plaintiffs in the matters of the suit. The next bill which had been drawn by Governor Salomon was immediately taken up on demurrer, and was very soon disposed of by the court. The How bill had been argued by Mr. Salomon and Mr. Smith, but the Meyer bill was argued by the governor alone; the decision was against the constitutionality of the act, a perpetual injunction being awarded, forbidding any action under the void statute. These acts followed closely upon the recent consolidation of the Prairie du Chien and other branches of the newly organized Milwaukee & St. Paul Railway company.

Just after the conclusion of the war the governor was retained to go south to defend an old friend on trial by a court martial, which, after some weeks engaged in that labor, resulted in an acquittal.

The governor and his partner were occupied through a series of years in defending persons charged with violations of the internal revenue laws, of which cases of much interest as to facts and as to legal controversies were before the United States court and generally resulted so as to reward their efforts.

Mr. Salomon had been a democrat during his stay in Mr. Ryan's office, but soon after the formation of his new partnership, the questions arising out of the settlement of the territory of Kansas and Nebraska became very active, and he was much interested and took the pains to learn from the New York Tribune the facts then published by that able paper, with the result that while he did not profess for some time any political change, he ceased to identify himself with the democratic party and remained without distinct position in parties until he was nominated for the position of lieutenant governor on the independent ticket by a convention in the fall of 1861. He was elected, Louis J. Harvey being elected governor at the same time, and Samuel D. Hastings, state treasurer.

The election in 1861, and the death of Governor Harvey, who was accidentally drowned in the Tennessee river, April 19, 1862, made Mr. Salomon governor of the state. He was unfamiliar with political affairs up to that time, and had accepted the nomination without considering

the probability of serving as governor. He was aroused to a deep sense of the responsibilities which fell on him so suddenly, and he set out to discharge, at whatever cost, his unwelcome duties. Many, even of his friends, feared lest he should be unable to perform the obligations falling upon him, and feared lest he should be an unsuitable representative of his party, his race and the bar in so important a juncture, but those who know him most intimately had no concern that he would not rise to the height of every demand. With little special preparation he took his seat, and thenceforward gave unremitting attention to his duties. His labors as the executive head of the state were severe and incessant.

The government was at that time in the urgency of the civil war, calling continually for fresh troops to enter the field. The military duties of the governor were for months exceedingly arduous. He gave many days from twelve to sixteen hours to his executive work, and he felt that no part of his duties were more weighty than the selection of the officers of the volunteers. He adopted regulations for the purpose of procuring experienced officers, and placed, when possible, those over the raw troops who were sent from this state to the field of battle, establishing a system of promotions, and he left no labor untried to give Wisconsin troops every advantage of discipline and care. It naturally happened that many who had ambitious designs found them thwarted by this system, and were ill pleased when their personal preferences were disregarded.

Governor Salomon's firm, just and upright character is well portrayed in his striking features depicted for the people of Wisconsin by the artist to whom it fell to preserve them for the executive chamber at Madison. His physical and mental constitution were alike sound. Strong common sense surmounted by clear perceptions and wise judgment found expression in excellent phrase, in eloquent speech and lucid writing—qualities given to a few Germans who have won distinction as American statesmen. With the pen or on the platform he and his friend Carl Schurz have been equally admired, whether addressing Wisconsin audiences in their native tongue or in the English language. Whether arguing before the supreme bench or the juries of Milwaukee



county Mr. Salomon was always pleasing, always clear, and always commanded the earnest attention of his hearers, and his reputation for perfect integrity in every position added force to his effective sentences.

He was chosen a member of the board of regents of the university in the state of Wisconsin in 1857, and from that time took an active part in the management of the university. He was president of that board until shortly before leaving Wisconsin, when he resigned. When he entered the board the affairs of the university were in a deplorable condition for want of sufficient income, principally because a large part of its funds had been used in the construction of buildings at a time when greatly needed for the purposes of present education. The proposition was seriously urged to close the university and even distribute its funds among other colleges. He utterly opposed this, and insisted that the diversion of the fund for buildings was in contravention of the spirit of the grant by the United States; that the state should itself furnish the buildings, and that it should refund the principal so diverted, at least the interest thereon, being about \$7,000 per year. In its crippled condition the university had but few warm friends, and many were hostile to it; but by dint of argument and perseverance the legislature was finally prevailed upon to adopt substantially his views; and it made, accordingly, appropriations which enabled the board of regents to preserve and develop the institution, since which time it has become, and yet remains, an exalted honor to the state of Wisconsin. The governor was also prominent in urging the embodiment of the agricultural college and its fund with the university, giving strength to both. In June, 1862, the honorary degree of LL. D. was conferred upon Governor Salomon by the board of regents.

As the end of Mr. Salomon's term as governor approached he was urged to become a candidate for re-election, which he declined until he, going to Vicksburg in the summer of 1863, met many of his old friends, including those bearing commissions which he had signed. There he was so strongly urged to run that he could not oppose the argument urged by them, that he owed his services to the state as well as they. On his return to Wisconsin he expressed his willingness to accept the

nomination for governor, but then discovered that others had taken advantage of his previous reluctance to arrange for delegates in favor of other candidates, and those who had been chagrined by the governor's military appointments were quite ready to prevent his renomination. The convention, which indicated on the first ballot a majority for Governor Salomon, was adjourned long enough to allow the necessary manipulations to compass his defeat. The scandal following was long a source of bitterness to high-minded republicans.

Soon after Governor Salomon's term of office ceased he was induced to go to New York city to enter into practice, and particularly to assume the duties of counsel for the German government. His departure from Wisconsin was felt by his political friends and by all who knew him to be a grave loss to the state. The members of the bar and other friends joined upon his departure in a banquet, celebrating the occasion, at which the most flattering words were used towards him, and the Milwaukee lawyers united in the gift of a set of Wisconsin supreme court reports. He entered upon the practice of law in New York city at once and remained there for a number of years, until the failing health of his wife made it necessary for him to spend much time in Europe, so that at last, in May, 1894, he retired altogether from practice, and soon after took up his residence at Frankfort-on-Main, where the climate and conditions were more favorable to her condition.

Mrs. Salomon is a lady of highly pleasing manner and great accomplishments. She speaks French, German and English with perfect command, and was much admired in society, as far as her health would allow her to form acquaintances and assume her natural position.

In New York city Mr. Salomon was associated with the firms of Salomon & Burke; Salomon, Hall & Dulon; Salomon & Dulon, and Salomon, Dulon & Sutre.

Governor Salomon and his friend Mr. Schurz opposed the election of Mr. Blaine. While usually acting with the republican party, he has occasionally disregarded party ties. In New York city municipal affairs he took an active part, particularly when in 1870 and 1871 he was a member of the committee of seventy that was formed to bring to light

the scandalous frauds of the infamous "Tweed ring," in order to rescue the city from that band of public robbers. Governor Salomon was chairman of the committee of legislation which drafted and urged the adoption of the necessary measures for the overthrow of the common enemy.

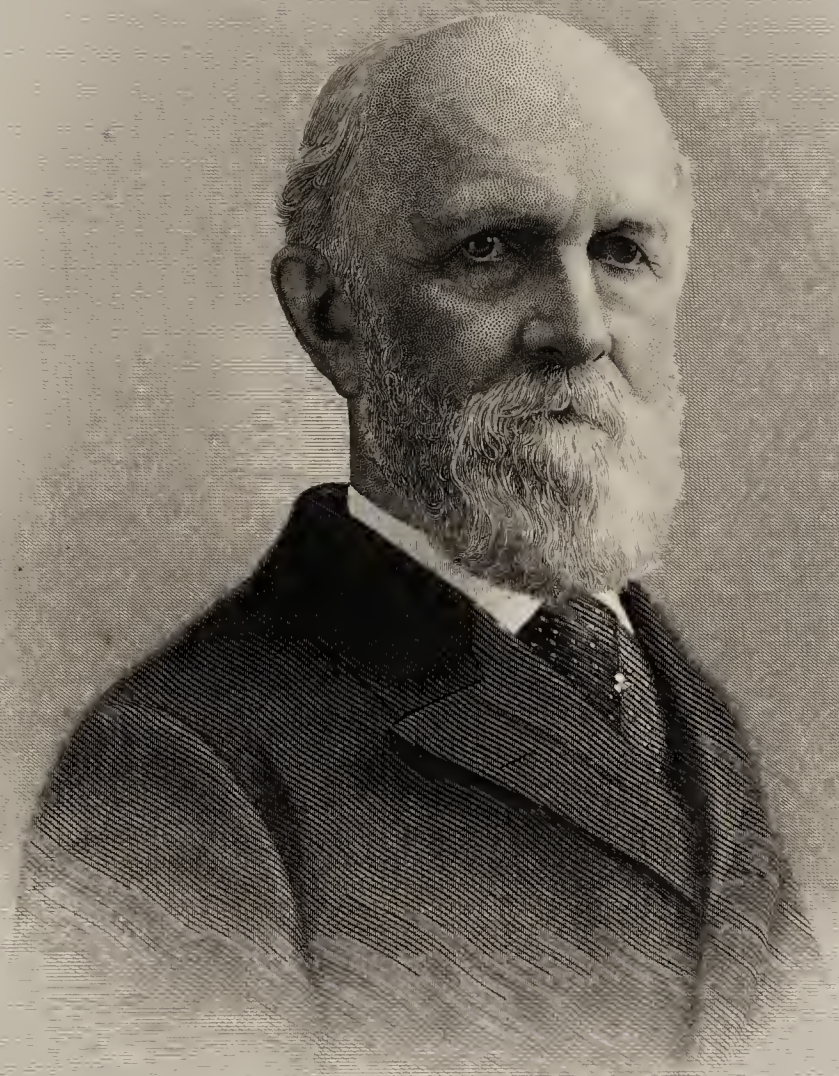
Mr. Salomon's parents and ancestors belonged to the Lutheran church, in which religious faith he was brought up, but has not adhered to any church organization in the United States, his mind being inclined to great liberality in religious and political opinions. He has not belonged to any secret societies, but has been a member of many charitable and friendly societies. He was one of the founders of the German legal aid society of New York, and was president of it from 1875 to 1888. That association has given gratuitously most valuable legal aid, as well as assistance, to over one thousand poor persons, mainly to Germans, for the first twenty years of its existence, and after that to the poor and distressed people of all nationalities.

Governor Salomon's friends maintain a deep and abiding attachment to him, and thousands of people in Wisconsin have never ceased to regret the day when he was induced to depart from a state which would have been so glad to pour out its highest honors upon him. His abilities, his fine presence, his excellence in all which makes a man useful to the public and dear to his friends will be always remembered by those who had the happiness to be intimately familiar with Edward Salomon.

### JOSHUA STARK.

Among the hopeful young men who came to Milwaukee during the first twenty years of its existence was Joshua Stark, a descendant of a family well known in New England, where he was born at Brattleboro, Vt., August 12th, 1828, the son of Rev. J. L. and Hannah G. Stark, both of whom were natives of Bozrah, Connecticut. They removed to Canajoharie, New York, in the spring of 1839, and three years later to the village of Mohawk, in the county of Herkimer. While here resident the son pursued preparatory studies at the academy in Herkimer and





Joshua Starks





later in Little Falls, New York, and entered Union college, Schenectady, in the spring of 1846, joining the sophomore class. From January, 1847, to January, 1848, he was employed as a tutor in the family of Edward C. Marshall, in Fauquier county, Virginia; but the love of learning and ambition for success were so strong upon him that he pursued his studies during this time and kept up so well that upon examination he was permitted to resume his standing and graduate, in 1848, with his class. In the fall of that year he made arrangements to go to west Maryland to teach a classical school, but because of the unexpected death of an elder brother was induced to forego that purpose and to enter the law office of J. N. & D. Lake at Little Falls, New York. While applying himself to his legal studies with the industry that has ever been a characteristic of his life he was compelled to devote a portion of his time to other work as a means of maintenance and was for a time an assistant instructor in an academy, village clerk and town superintendent of schools. He was admitted to the bar by the supreme court of New York, at the general term at Watertown, in July, 1850.

While revolving in his mind the question of location, the suggestion was made that the west was the proper place for a young man of energy and brains; and after due consideration he concluded to adopt Horace Greeley's advice before it was given. With a few books and a little money he set forth in the fall of the year last named with Milwaukee as the point of destination. Proceeding by rail to Buffalo, thence by boat to Detroit, across Michigan to New Buffalo by rail, the rest of the journey was made by boat, and terminated on October 6th. By the advice of people he had known in early youth, he did not locate immediately in Milwaukee, but proceeded to Cedarburg and formed a partnership with F. W. Horn, the expectation being that the acquaintance of that gentleman would bring business, which the legal knowledge of the junior partner would enable him to properly transact. Like many other theories, this proved a failure when reduced to practice, or rather a lamented lack of practice, for the clients failed to come. A long and weary winter ensued, relieved not even by the presence of his partner, who was absent in the state legislature. Mr. Stark had more courage



than cash, and when he saw that the practice of the firm was not sufficient for the payment of board, he indulged in some deep reflections as to the best course to pursue. That winter he devoted his leisure time, which comprised nearly every hour, to the study of the German language and in making up the deficiency he felt in knowledge of chancery practice and the principles of equity jurisprudence. He successfully overcame the difficulties of the German language, of which he soon became a master, and soon became so well grounded in the knowledge of that language that even the Germans themselves would not suspect his origin from his speech. So fluently did he read and speak German that at the Fourth of July celebration held at Milwaukee, in 1852, he was chosen by the Germans to read the Declaration of Independence in German in preference to the selection of one of their own number.

Mr. Stark moved to Milwaukee on May 19th, 1851. He soon won such standing among the people that in the spring of 1853 he was elected to the office of city attorney, holding the position for one year and serving to the satisfaction of the people. In November, 1855, he was chosen as the democratic representative of the first ward of Milwaukee to the legislature, for the session of 1856. He was made chairman of the committee on judiciary, and a member of the committee on banking, and, although the second youngest member of the body, was chosen the speaker pro tem., in which capacity he presided during a large portion of the adjourned session in the fall. During the regular session the gubernatorial contest between Messrs. Bashford and Barstow came before the legislature and the supreme court. Mr. Stark refused to join in any resistance to the decision of that court, and materially aided in preventing a serious collision of opposing parties.

Near the opening of the regular session a communication from the holders of scrip issued by the state "for the construction of the Fox and Wisconsin river improvement had brought to the notice of the legislature the fact that the improvement company, to which the state had in 1853 transferred the improvement and the congressional grant of land in its aid—upon condition that said company should pay the indebtedness of the state incurred on account of the work—had neglected

to comply with this condition, and had permitted coupons for interest to be protested for non-payment, and the credit of the state to be seriously prejudiced." The matter was referred to a select committee of the assembly, of which Mr. Stark was chairman. Charges of other delinquencies and misconduct on the part of the improvement company were presented during the session, and were referred to the same committee. The committee soon discovered that the questions involved were too important and complicated to be disposed of upon a superficial examination, and on its recommendation it was instructed to investigate the subject thoroughly during the recess and report at the adjourned session of the legislature to be held in October of the same year.

As the result, the legislature passed a bill reported by the committee, at the October session, by which the prompt payment of the indebtedness of the state in question was fully secured and the abuses complained of were corrected. In this matter Mr. Stark, as the active and efficient head of the committee, and the author of the bill referred to, rendered a service of great value to the state and exhibited a high order of ability as a legislator.

In 1856 Congress made a grant of land to the state of Wisconsin for railroad purposes, and the disposition of these lands was one of the leading questions under discussion in the adjourned session. The scandals that grew out of those matters need not be referred to here, except to make record of the fact that Mr. Stark came out of the whole matter untouched by any taint of acceptance of railroad bonds, and that his share in all the transactions was shown to have been honorable and above suspicion by the committee of investigation in 1858.

In the fall of 1860 Mr. Stark was again called to a position of public responsibility by an election to the office of district attorney, which he held through 1861 and 1862. At the outset of his term he found the course of criminal justice blocked by a conflict of opinion between the judges of the municipal and the circuit courts. The municipal court had only been established in 1859, and there was no express statute directing to what court indictments found therein should be sent for trial, when removed upon affidavit that the judge was prejudiced. Certain

indictments had been so removed to the circuit court of Milwaukee county for trial.

When these indictments were moved for trial in the circuit court Mr. Stark was met by defendant's counsel with the objection that the circuit court had no jurisdiction, since, as was contended, the statute only authorized the removal of criminal indictments from the municipal court to another county, and not to another court in the same county, for trial. This disagreement of the judges arrested all prosecutions for high crimes, and threatened serious consequences. In this dilemma Mr. Stark applied immediately to the supreme court for a mandamus to compel the circuit judge to proceed to the trial of the indictments in question. The matter was pressed to a speedy hearing, the important constitutional question involved being ably argued by Mr. Stark. The result was an early decision sustaining the jurisdiction of the circuit court and commanding its judge to proceed with the hearing of the cases.

In 1862 Mr. Stark, as district attorney, was enabled to perform a service to the public of no small value. In that year the state supreme court, all the judges concurring, held in a case that was appealed from Milwaukee county that the act of the legislature, passed in 1854, requiring railroad companies to pay into the state treasury a percentage of their gross earnings, in lieu of taxes, and exempting their property used for operating their roads from taxation, either general or local, was unconstitutional and that all taxes throughout the state, which were affected by the omission of such railroad property from the tax rolls, pursuant to said act, were void by reason of such omission. The decision affected the taxes of several years, and threatened to be very embarrassing in its consequences. Mr. Stark, as district attorney, representing the losing party, moved for a rehearing, and so vigorously attacked the decision, urging the application of the doctrine of *stare decisis*, upon the strength of an unreported decision of the supreme court, in 1855, sustaining the act, that the judges were constrained to order a rehearing, and upon further consideration to confirm the constitutionality of the act in question.

In 1873 Mr. Stark undertook for the city the revision and consolida-



tion of its charter, with its numerous amendments, covering a period of twenty-one years, and also of the general ordinances adopted during a longer period. This work was mainly done out of business hours. When completed, his services were further required to frame amendments proposed by the city council, making changes of a radical character in the municipal government. The whole task was of the most exacting character, requiring great legal knowledge, untiring patience, severe labor and sound judgment; and the manner in which it was completed by Mr. Stark showed him to be the possessor of these diverse requirements.

Any recital of Mr. Stark's public labors that did not give prominence to his work in connection with the public schools of Milwaukee, and do full justice thereto, would be very incomplete. In September, 1871, he was made a member of the school board for the seventh ward. In June, 1873, he was compelled to resign the position because of outside work, but resumed it in April, 1874, and continued steadily in the work until the summer of 1884. In the spring of 1875 he was elected president of the board and held the office by successive elections until the close of his connection with the schools. His thorough education, early experience in school work, and sound business sense, made him of great use to the schools, and enabled him to administer his duties to the best interests of all concerned.

As president of the school board Mr. Stark was ex officio a member of the committee on high schools and of the board having control of the public library. He gave an efficient and earnest service to both of these important institutions. He kept a vigilant eye upon the entire school system while at its head, and had no small influence in directing the policy and work of the board. It was, therefore, with no small degree of regret that the public learned early in 1884 that, in obedience to the demands of his private affairs, Mr. Stark was compelled to sever the connection he had so long held with the public schools. There was not only no lack of private expressions of regret at this decision, but the general feeling took such public action and shape that the recipient thereof could but feel that his willing services had been ob-

served and appreciated. When his decision was made known to the board, its opinion of his work was expressed in a series of resolutions. The teachers of the schools felt that in the departure of Mr. Stark from the board they had lost one of their most valued advisors and truest friends. They united in the preparation of a series of resolutions which, like those of the board, were handsomely engrossed and framed before presentation. In this expression of their feelings the teachers declared that in his retirement from the board the public school system of the city had "lost one of its strongest and ablest supporters; one whose character and attainments made him a most worthy champion, and whose enlightened judgment and broad views constitute him one of the foremost advocates of every true educational reform. . . . Especially have you deserved and secured our confidence and esteem through your unflagging efforts to ennoble the work of the teacher and lift it to the dignity of a profession." Mr. Stark was also tendered a testimonial reception at the normal school building, where teachers, members of the board and many others met him, and in short and pointed speeches touched upon the value of his school work. He was also presented with a life membership in the national teachers' association. The evening of June 9th saw at the Plankinton Hotel an even more marked and general tribute to the retiring president, in the shape of a banquet tendered Mr. Stark by prominent educators and professional and business men generally.

Mr. Stark has served the people in many ways other than those enumerated above. He was one of the charter members of the Young Men's association of Milwaukee and also of the Milwaukee Bethel union, and one of the directors of each of these institutions through a number of years. In 1883 he was elected president of the Milwaukee bar association, which position he held for many years. He has had an active part in various associations for the advance of music, art and education, where his fine natural taste and culture have been made instruments for the general good. He was for some years a director in the Milwaukee musical society, and is yet one of its contributing members. In 1885 the legislature provided for the creation of a commission to

examine all candidates for admission to the bar, with the exception of the graduates of the law school, appointments to the commission to be made by the judges of the supreme court. Mr. Stark was one of the original appointees and was continued a member of the commission by annual reappointment until 1896. A firm advocate of "civil service reform," Mr. Stark has for years desired the abolition of the "spoils" system of politics, and after the legislature authorized by enactment in 1895 the formation of a civil service commission for the city of Milwaukee his appointment by the mayor to a membership of that commission for the full term of four years was but a fitting tribute to his efforts in behalf of good government. This commission is composed of four members who serve gratuitously.

Although Mr. Stark was not in the military service during the war of the rebellion, he loyally gave his aid to keep alive the courage and patriotism of the north, attending war meetings, and doing all that lay in his power for the good of the cause.

Among the important suits in the law courts with which Mr. Stark has been connected mention may be made of the case of the Northern Transit company vs. the Grand Trunk Railway company, in which he was associated in the defense with G. W. Hazelton. The action was brought to recover \$250,000 damages for breach of contract for interchange of traffic during the years 1879 and 1880. Upon the first trial the jury assessed the plaintiff's damages at something over \$112,000. The verdict being set aside as excessive, a second trial was had, lasting nearly five weeks. Mr. Stark went to work upon the second trial with a determination to work down to the facts of the case. By a thorough scrutiny of plaintiff's books of accounts and documents during the progress of the trial he was able to demonstrate that the greater part of plaintiff's pretended losses were fictitious, and the recovery was reduced to less than \$10,000, including interest.

Mr. Stark's preference has always been for the department of equity, and in that branch of the practice he has been mainly employed, and has therein won his chiefest victories. The well-known cases of Noesen vs. the Supervisors of Port Washington, 37 Wisconsin, 168; Odell vs.



Rogers & Burnham, 44 Wisconsin, 136; and 61 Wisconsin, 562; and Wells vs. McGeoch; State of Wisconsin vs. McFetridge et al., and the suits brought to determine the construction of the wills of the late Thomas M. Knox, 59 Wisconsin, 172; and N. B. Caswell, 63 Wisconsin, 529, are among the most important litigations upon which he has expended his best energies during the last twenty years. All of the above named cases have been before the supreme court of the state, whose reported decisions bear testimony to the difficulty and importance of the questions involved and the industry and ability displayed in their discussion.

In addition to the natural substratum of ability, without which the success which Mr. Stark has obtained could not have been possible, he is endowed with the quality of thoroughness and a persistent energy that fears no labor. When his services are enlisted in a case he works upon it day and night, if necessary, without regard to the pay that is to be secured or the amount that may be involved. He is shrewd and astute, and no case can be so complicated but that he will solve it. "He understands bookkeeping and figures better than a bookkeeper." He is especially strong in equity cases, is a great reader, and yet regards law as a science that cannot be learned altogether from books. He prepares his cases with the greatest care, and before going into court understands all the dangers and possibilities which he may be called upon to confront. As a man and citizen he possesses the highest regard of all who know him. His personal life is without reproach, and his home and family relations are of the happiest and most harmonious character. His generous deeds are performed without ostentation, but in abundance, and there are many whose loads have been lightened and way made more peaceful and secure because of his hearty sympathy and generous aid.

#### DAVID G. HOOKER.

May 12, 1888, Judge George H. Noyes, of the superior court of Milwaukee, presented to the supreme court the memorial of the bar of Milwaukee concerning the death of David G. Hooker. Judge Noyes' address, except the opening paragraph, is given:

"David G. Hooker was born in Poultney, Vermont, on the 14th of September, 1830. In his twenty-third year he graduated from Middlebury college, and after reading law for some time at Middlebury, Vermont, he was admitted to practice in 1856. Coming to the city of Milwaukee in this latter year, he continued his residence there until the time of his death on the 24th of March of the present year. While he remained in general practice, he was at different times associated with some of the most eminent members of the bar of that city. Among them F. W. Pitkin, afterwards governor of Colorado; H. L. Palmier, now president of the Northwestern Mutual Life Insurance company, and Luther S. Dixon, ex-chief justice of this court. He was city attorney of Milwaukee from 1867 to 1870, and its chief magistrate in 1872 and 1873. In 1878 he became the general counsel of the Northwestern Mutual Life Insurance company, devoting the whole, as he had for many years before a portion, of his time to the interests of that company. This position of great trust and responsibility he held until the time of his death. Such, in brief, is the outline of his professional and public life.

"It was my fortune to have been associated with Mr. Hooker in business for the four years immediately preceding his retirement from general practice. It was at a time when long experience had ripened him into the learned counselor. With me it was at the beginning of professional life. From the first day of my acquaintance with him he was to me an elder brother, a model man and counselor. Such always he continued. No disparity in years or wisdom ever cast a shadow between him and his younger associates at the bar. To all he was the same kind, patient, and unassuming adviser. His genial smile lit up his open, friendly countenance alike for the old and the young, for the wise and the inexperienced.

"Gentle and retiring by nature, Mr. Hooker loved not legal warfare for its excitements and its conflicts. He waged it in sincerity for its results, and in fidelity to his clients. He entered the court room not as one who hastens to the fray, but as one laden with a duty to discharge and equipped to discharge that duty well. Once in the arena, he soon

lost himself in his cause and displayed the strong abilities he possessed as an advocate before court and jury. His honest face and candid words carried conviction where the tongue of the orator would have been of no avail.

"Though successful in the conduct of causes in court, Mr. Hooker excelled in safe and judicious counsel. Deliberate in coming to his conclusions, he expressed them when formed with brevity and great precision, and adhered to them with the tenacity of strong conviction. Reflection and firmness were predominating qualities. With these tendencies of mind, there were no hasty opinions or ill-considered advice given by him. In his specialties of real estate and insurance law, to which in later life he devoted himself, he became a master. On questions of title and investment, ranging through an almost limitless field of inquiry, and involving the statutes and decisions of many states, he became unquestioned authority. It will be to his imperishable credit that the vast securities of that great insurance company which he so ably counseled and faithfully served are without a flaw in title, and will stand secure as adamant whether in periods of panic and depression or amidst the fluctuations of time and credit.

"Briefly I have spoken of the lawyer and citizen. What may I add of the man? Others of the bench and bar have told, and others still will tell, in fitter words than I can command, how just and kind he was; how sterling and noble his qualities of heart and mind; how gentle, modest, yet firm, his nature; how generous and loving as father and husband; how excellent a friend; how genial a companion; how consistent a Christian; how peerless a man. Let me adopt as my own the tenderest of such expressions and the highest and sincerest of such eulogies and leave them here as a slight tribute to the one so greatly loved and honored by all who knew him."

HENRY MARTYN FINCH.

The subject of this sketch was born in the state of New York, December 15, 1829. At an early age he removed to Michigan, and in 1850 to Milwaukee. He studied law in the office of Smith & Palmer,



a firm composed of Abram D. Smith, subsequently an associate justice of the supreme court, and H. L. Palmer. In 1853 Mr. Finch was admitted to the bar and in 1857 became a member of the then firm of Finch & Lynde, the name of which was changed to Finches, Lynde & Miller. His connection with that firm continued until his death, March 27, 1884.

In presenting to the supreme court the testimonial of the Milwaukee bar concerning Mr. Finch (which was signed by James G. Jenkins, David S. Ordway, G. W. Hazelton, D. H. Johnson and G. H. Noyes) Mr. Jenkins said that soon after Mr. Finch became connected with the firm of Finches, Lynde & Miller he "attained to distinction in his profession." At the early age of thirty years there was cast upon him much of the responsibility of important litigation of an established business; a burden sufficient to have daunted the spirit of one of much greater experience. With the indomitable will and unflagging energy which, above all other qualities, characterized him, Mr. Finch devoted himself to the heavy labor so cast upon him; and from thence to the day of his death consecrated all vigor of mind and physical energy to the due performance of the duty thus imposed. For upwards of a quarter of a century he was an important factor in much of the weighty litigation in the state. The extent of his labor and his successes are in part preserved in the reports of this court from the fifth to the fifty-ninth volumes of the reports. In much of the important litigation in the federal courts he was a prominent actor; the reports of the supreme court of the United States alike testifying to the assiduous industry and ability which characterized the presentation of his cases. Those of us who were accustomed to meet him in opposition best realized how dangerous a legal adversary he was; how invincible must be the cause, how impenetrable the armor of defense, that could withstand his mighty attack. He was all lawyer. He suffered himself to entertain no ambition for public distinction. He deliberately avoided the ways of political preferment. He devoted his life and all manly ambition to the cause of that jealous mistress, the law, who permits no divided allegiance, who suffers no indifferent devotion.

In many respects his career was remarkable, his success phenomenal. Without early academic or literary culture, without special gifts or grace as an orator, he went to the front and achieved high rank in the profession, overcoming any disadvantages from want of early training by the assiduous labor and constant study of his later years. His zeal for his client never suffered abatement, and knew no limit of honorable endeavor. He seemed to clothe himself with the cause of his client, making that cause his own, defending it with all his powers and against all comers. And so he battled until the end, taking leave of the profession, of courts, and of client, reluctantly, in the midst of an important trial, almost upon compulsion, and only when physical weakness could no longer permit the performance of duty. He dragged his tired body to his home and lay down and died.

He spent his life in the service of others, in devotion to his chosen profession, leaving to his family the noble legacy of a splendid name as an able lawyer and an honest man.

And so ends a life that battled against odds and won; an enduring example to the young of what may be overcome and what may be attained by earnest, plodding study, by unselfish devotion to duty, by unflagging zeal, by indomitable perseverance.

The occasion relates only to the professional life of Mr. Finch. I may, however, be permitted, without trespassing upon propriety, to bear testimony to his high character in private life. As husband, father, and friend, he was loyal, devoted, indulgent, steadfast—"without fear and without reproach." Such a life is never wasted. Such an example is never lost. They bear fruit in that immortality of influence that, for good or for evil, flows from every life. Happily, here, that life and example go in aid of what is honest, what is noble, what is faithful, what is of good report. Such life and example ennoble human nature; dignify and glorify our noble profession.

Justice Cassoday, responding for the court, said that "the presentation so appropriate and the remarks so fitting are heartily endorsed by the court.

"However sad, yet it is true that a strong, vigorous, and full-

grown man, occupying a very high position in the very front rank of professional life, has fallen. He had been there and on duty for more than a quarter of a century. Hence the breach in the column has created a vacancy which necessitates a readjustment of the whole line. For twenty-seven years he had been a member of a firm which has become historic in the legal controversies of Wisconsin. That firm, from the beginning, contained two very learned, able, and experienced lawyers, who had been recognized as leaders in the profession almost from the organization of the territory (Asahel Finch, Jr., and William P. Lynde). Pressed and overwhelmed with the burdens and duties incident to the career of such lawyers in a rapidly growing metropolis in a young and growing state, they wisely sought relief by taking into partnership two young men, including the deceased (the other was B. K. Miller, Jr.), each peculiarly adapted to furnish and render aid in the directions most needed. Neither shrank from the position assigned, but each boldly and eagerly volunteered for the entire war. To the deceased was assigned the more active and public duties of trying cases in any and all the courts. This, of course, gave him, from the start, great opportunities, but necessarily forced upon him great responsibilities and labors. To meet and to discharge all these acceptably to his clients and with credit to himself, required great natural abilities and immense resources, accompanied by unremitting study and application. These considerations must, necessarily, have awakened in him a most lofty ambition and a commendable professional pride—ever pressing him forward to greater endeavor; for every lawyer who publicly tries a case is himself on public trial. But Henry M. Finch did not enter the profession as a mere amateur. He meant business from the start, and never meant anything else. He frequently met those better furnished with ornate learning and the wisdom of the schools, but seldom any who more thoroughly studied and mastered the case in hand. To him the facts, the principles involved, and the decisions in support of them, were of far more importance than any mere oratorical performance. Hence, while others were studying to embellish their speech and to grace their diction, he was busy studying the law and the evidence. To him every



lawsuit was a prospective battle, and the pleadings and preliminary motions were but skirmishes for strategic positions in the final struggle. Being, to his mind, an expected battle, he prepared himself in advance to fight it out, and to force victory by superior fighting. Fully armed and equipped, and with no expectations of anything but a contest, he was never taken by surprise, except when his opponents voluntarily surrendered.

“He was bold, ardent, energetic, zealous, sanguine, exacting, severe, self-reliant, intense, and indomitable. These qualities gave him convictions without doubts, impetuosity without weakness, courage without wavering, earnestness without dissimulation, and pertinacity without remission. With such a make-up, he necessarily believed in himself, his clients, and the causes of his clients, and made them his own because they were his clients’. Thorough in preparation, quick in perception, clear in statement, forcible in utterance, logical in argument—he was always strong, even when in the wrong, and almost irresistible when in the right. He never thought of defeat in advance, except as a possibility, and then only to retrieve in the appellate court such a calamity in the trial court; and for that purpose he was in that court always prolific with objections. This made him appear to some as excessively technical, and at times narrow, but it was the reserve force of a general wherewith to recapture the field in case he should be driven from it. As defeat was always unexpected, it was always unwelcome, and with him frequently unaccountable on the theory of an honest difference of opinion. To him every cause had two sides, and the right side was his side. Mistaken he might be, but it was an honest mistake, forced upon his convictions by the very laws of his being. He not only believed in his clients, but they believed in him, and well they might, for he vigilantly discharged every responsibility and conscientiously performed every duty, and his life was devoted exclusively to their interests. For them he was willing to spend and be spent, to sacrifice and be sacrificed, and by slow degrees the tragedy was completed. In this he was grandly heroic, but in so far as he was excessive he was unwise. It has been aptly said that his life was spent in the courts. It may be added that

the courts always listened with interest, frequently with instruction, and generally with profit.

"There certainly have been but few, if any, lawyers in this state, who have in the same number of years tried and argued a greater number of important cases. His practice was immense, his responsibilities numerous, his duties at times burdensome; but there was no flagging of interest, no abatement of application, no neglect of duty, even for that relaxation and recuperation so essential to the overworked lawyer. He had a large measure of professional success, and he has left memorials of his work among the records of most of the higher courts of the northwest, the supreme court at Washington, and many others.

"But mere professional success is not a sure test of manhood and character. That may be attained by one without sympathy, without friendship, without benevolence, without charity, without love, without virtue, without faith, without hope of immortality. To know the real man we must know something of his inner life. Public utterances cannot always be relied upon. Such utterances are usually made for an occasion, and with circumspection, and hence are more the revelation of a subject, or of other men, or of a cause, than of a speaker. It is in unguarded moments that the heart makes its truest revelations. Then it reveals the hidden purposes of life, the spirit which moulds the character, tempers the disposition, shapes the conduct, gives direction to the intellect, and controls the will.

"I first met 'Matt.,' as we all called him, at Elkhorn, when we were both young in the profession. His boldness of speech, his clearness of perception, his aggressive manner, and his complete mastery of the question involved drew me toward him as one having an engaging and promising professional future. That acquaintance ripened into professional intercourse, that intercourse into familiarity, that familiarity into friendship, which, I trust, continued to the end. When at the bar we often met while attending court, especially here at the capitol, and frequently walked about the park, about the city, and talked as lawyers loving their profession only talk. His motives always seemed to be pure, his utterances sincere, his dislikes undisguised, his friendships gen-

uine, his integrity irreproachable, his beliefs earnest and emphatic, his hope of immortality permanent, his faith in Christianity unalterable. There was nothing negative in his make-up, no one ever charged him with being non-committal or with having any duplicity in his nature. All agree that he was genial, open-hearted, kind, social, benevolent, and generous. He was not always without a grievance, real or imaginary, and as to the supposed causes of such grievances his criticisms were often severe, sometimes unwarranted, and occasionally unjust and unreasonable; but he was too bold and aggressive to remain silent, too honest to conceal, too exacting to overlook, too faithful to his own promptings to disregard or to allow to go unrebuked.

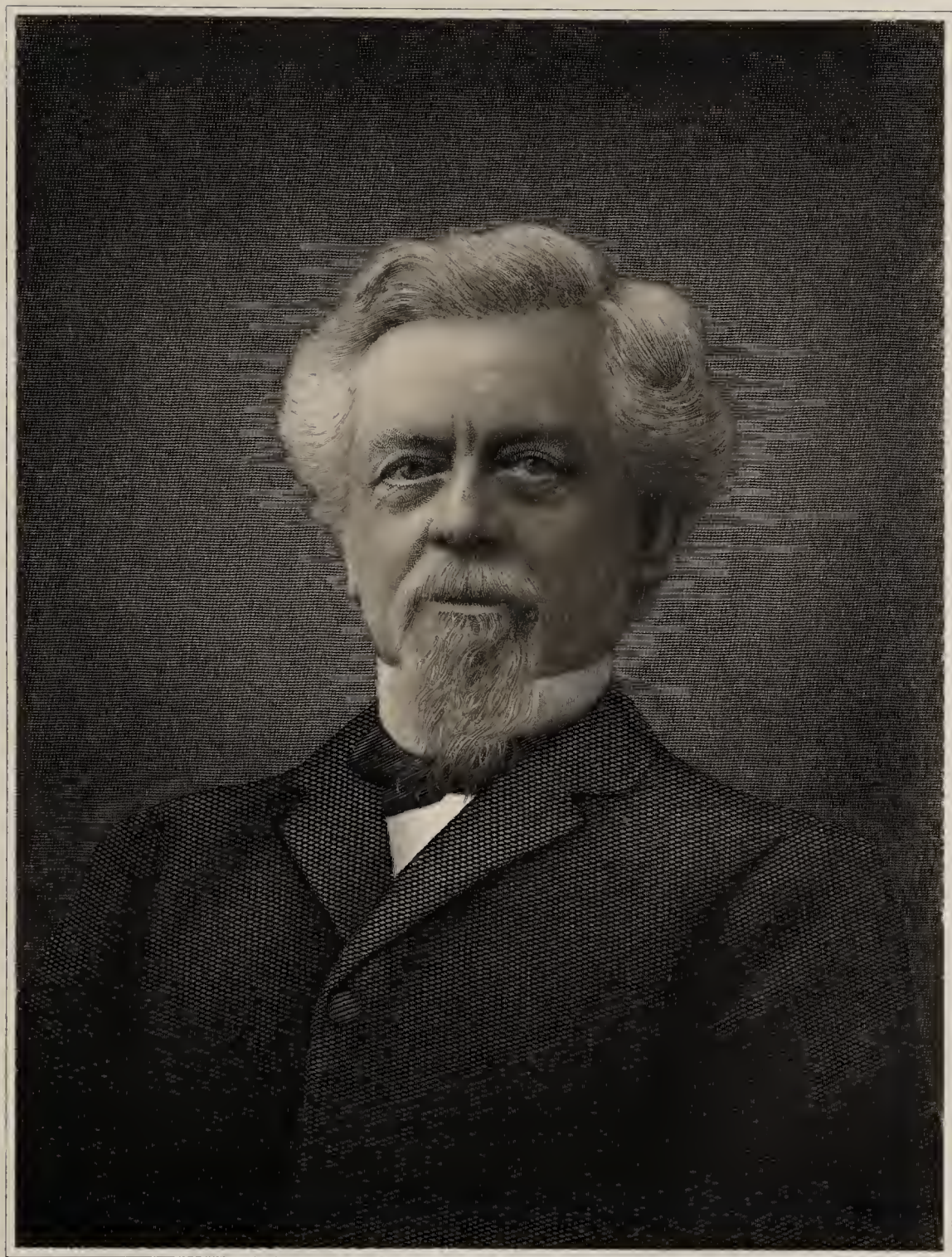
"Of his home life I have but little personal knowledge; but careful inquiry of those who know, and whose statements to me are always verities, reveals the fact that in that home no angry word had ever been spoken, no unkind remark ever uttered, no companionable urbanity ever neglected, no parental tenderness ever omitted; but, on the contrary, it was always pervaded by a spirit of mutual sympathy, mutual forbearance, mutual confidence, mutual trust, mutual love. Perhaps no higher praise can be given than to quote the language of one who knew him from early boyhood, but had for years been estranged from him by a bitter personal controversy and litigation, and yet who, upon his death, voluntarily wrote and published this touching tribute:

"'He made his way by dint of untiring labor and persevering will to a place among the foremost lawyers in the state. . . . While this may be said of Mr. Finch's career as a lawyer, there was a brighter side to his character, and that was best exhibited in his own home. He was devotedly attached to his own family, and no father could be more considerate to his children, and no husband more tender and more thoughtful for the welfare of his wife, than he.' "

#### JOHN W. CARY.

John Watson Cary, for forty-five years a lawyer in Wisconsin, and for nearly all that time among the greatest of Wisconsin's lawyers, was born February 11, 1817, at Shoreham, Vermont; his early life was passed





John W. Cary





on his father's farm and in attendance at school, including two terms at an academy. In 1831 the family removed to Sterling, Cayuga county, New York; the next year the subject of this sketch tried clerking in a store, but, not finding that employment agreeable, he returned to the home farm. Soon afterward he was enabled to gratify his ambition for learning by attending an academy at Hannibal, Oswego county, for two terms, when the exhaustion of his funds compelled him to return home, where he remained until 1837, engaged on the farm in summer and in teaching school in the winter. August, 1837, he entered the lyceum at Geneva, New York, and devoted his time to the study of Latin and Greek, boarding himself while there; subsequently he obtained private instruction; in September, 1838, he entered Union college, whence he was graduated in 1842. During the last year of his college course he studied law and later completed his preparation for admission to the bar by reading in an office at Auburn, New York. In January, 1844, he was admitted to the bar of the supreme court at Albany, Judge Nelson presiding, and the next day became a solicitor in chancery, having been admitted by Chancellor Walworth. The following month he began practice at Red Creek, Wayne county, New York. Here he served as postmaster.

In 1850 Mr. Cary removed to Wisconsin, locating at Racine; the following year he formed a partnership with the late James R. Doolittle, which continued until 1853, when the latter became judge of the first circuit; in 1857 and 1858 he had partnership relations with A. W. Farr and Lewis M. Evans. During his residence in Racine Mr. Cary was state senator, 1853, 1854; mayor, 1857. In January, 1859, he removed to Milwaukee; his partners in the practice there were, successively, Wallace Pratt, A. L. Cary and J. P. C. Cottrill. He was a member of the city council in 1868 and of the popular branch of the legislature in 1872.

Soon after becoming a member of the Milwaukee bar Mr. Cary was employed as counsel by the trustees in the foreclosure mortgages upon the La Crosse & Milwaukee railroad, which resulted, after years of litigation, in the organization of the corporation now known as the Chicago, Milwaukee & St. Paul Railway company, which, by the enlarge-



ment of its powers and the acquirement of various railway properties in several of the states and territories, became one of the great arteries of commerce in the northwest. At the time of his death, which occurred in Chicago on the 29th of March, 1895, and for many years previous, he was at the head of the law department of that great corporation. In the language of the memorial of the Milwaukee bar association, Mr. Cary, as the leading counsel of that corporation, "rose to a commanding position as one of the first corporation lawyers of the country, and his name and efforts are associated with as great controversies in connection with the establishment of the rights, powers and franchises of his client as were ever brought to judgment in the courts of this country. The record of his labor is preserved in the highest court in the land. In those controversies he encountered some of the most brilliant intellects in the ranks of the profession, and single-handed conducted the combats in which he became engaged to successful issues. In the reports of the supreme court of this state, his argument of causes began with the third and extended to the eighty-ninth volume. Held in the highest esteem by all courts before which he appeared, his rank and position as a lawyer was most enviable and crowned with deserved distinction. His advocacy of a cause was always sincere and earnest, and no blemish appears on his professional escutcheon. Sometimes slow in processes of thought and reasoning, he was sure and steadfast in his conclusions. Each man is said to have his own vocation, and with our friend 'there was one direction in which all space was open to him. He had faculties silently inviting him thither to endless exertion.' This made him a lawyer par excellence. In his espousal of a cause he was true to his convictions and always honest with himself and the court, as well as with his client. Once reaching a firm conclusion, he answered the description of the poet: 'He stood four square to all the winds that blew.'

"Highmindedness was with him a controlling characteristic. Inflexible and incorruptible integrity distinguished his whole career. He never could be otherwise than manly and brave and true, for one of his chief possessions was that high nobility of nature which is the chief

jewel of a truly great character. As he advanced in years he seemed to toss away 'the spoils of wrinkled age,' and moved on to the end with the same serenity of mind and persistent determination in the performance of duty which characterized him in the vigorous years of earlier life.

"In his intercourse with his fellow-men and with his associates in professional labor he was always considerate and gentle. No unkind or reproachful word ever passed his lips. He was true and faithful in friendship, magnanimous in his dealings with others, and every act was prompted by the highest sense of honor. He was modest and unassuming, simple and unaffected in manner, and admired, trusted and loved by all who knew him.

'In his family and home life  
He was all sunshine;  
In his face  
The very soul of sweetness shone.'

"Macaulay has said that there are a few characters which have stood the closest scrutiny and the severest tests; which have been tried in the furnace and proved pure; which have been weighed in the balance and have not been found wanting; which have been declared sterling by general consent, and which are visibly stamped with the image and superscription of the Most High.

"The friend whose death we deplore was one of those characters."

The memorial from which liberal quotation has been made was presented to the Milwaukee bar association by a committee appointed for that purpose, viz.: A. R. R. Butler, Ephraim Mariner, Jerome R. Brigham, James A. Mallory, John J. Fish, David S. Ordway and Joshua Stark; gentlemen whose personal and professional characters have been approved by the test of almost a half century's active life in this state. Surely, he of whom such men would pen such a portrait must have closely corresponded to the portrayal, and been a model lawyer and man. The memorial was presented to the supreme court by J. V. Quarles, who did not make an address. H. H. Field read the tribute of Burton Hanson, who was associated with Mr. Cary in the legal depart-

ment of the great corporation referred to. Mr. Hanson said: "It was my privilege to be associated with Mr. Cary during the last twelve years of his life, and I desire to pay my tribute of respect, and to bear testimony to his calm, strong mind, his stately equipoise, his broad equity, his inspiring truth, his breadth of view, his great and constant humanity, his tenderness as a husband and father, his constancy as a friend, his fairness, his honesty, his patience, his loyalty, and his goodness. Each one of these qualities he not only possessed in a high degree, but he exemplified them all in that every-day life whose burdens we bear and whose vicissitudes are to us such a mystery. All who knew Mr. Cary are in accord in saying that he was a man greatly beloved."

At the time the supreme court was formally notified of Mr. Cary's death, like notice was given of the death of Moses M. Strong. In addressing the court in memory of the latter, William F. Vilas digressed so far as to say of Mr. Cary that he was a massive and powerful lawyer, whose professional greatness has always seemed to me far beyond its measure in the common world. "Unostentatious, unpretending, without one single art to win attention or applause, he stands to me an ideal of sturdy, masterful, crushing, intellectual power in the law. Like the mills of the gods, he ground slowly, but he ground exceeding fine. When some great cause roused him to a full exertion and, summoning his forces, he bent himself to an analysis and exposition with the untiring constancy of which he was capable, I believe no advocate, whatever his gifts, could put him down before a court which recognized address to intellect as superior to the appeal to feeling. Amid all the brilliant achievements of the profession in this country, notable and admired as so many have been, I doubt if any should be ranked more able in conduct, more complete in victory, more richly fruitful to interests intrusted, than his preservation to his clients of the original properties of what is now the great Chicago, Milwaukee & St. Paul system of railroads, by his successive argument of eighteen successive cases, charged with varied and interesting questions, in continuous hearing before the supreme court of the United States, with resulting judgment in his favor in every one. He was matched against the learned and brilliant Car-



penter,\* whom none could overthrow by any mere art or skill, and the contest was desperate. Cary's triumph was one which only a great lawyer could have won, equal in powers of mind to the greatness of his cause. Much more would I gladly add, were it needful, to set forth in clear remembrance the excellence of that calm, massive, steadfast character, never moved from its fidelity to every-day duty of life by any trial, by storm or tempest, by temptation or by fear. From my earliest boyhood I knew him as my father's friend, as, in my maturer years, I rejoiced in him as mine; and with the respect and honor which his qualities command in revered remembrance, I would lay on his grave the sweetest flower of tender regard."

Mr. Justice Winslow responded to the memorial, and Mr. Hanson's tribute (that of Mr. Vilas was made subsequently) on behalf of the court: "The death of John W. Cary closed a legal career which was not only distinguished and successful, but long, well-rounded and complete. It was a career such as is given to few lawyers. There came to him naturally and easily nearly all the great rewards which the profession holds out to its faithful members. These rewards came not through mere good fortune or chance of circumstance, but as the result of ability, industry and integrity; they came because they were deserved and earned.

"It has been justly observed that the state of Wisconsin was peculiarly fortunate in its early bar. There came to the state in territorial days and in the days of early statehood a band of educated lawyers, strong mentally and physically, combining the refinement of the scholar with the vigor and ambition of the sturdy pioneer. They came at the formative period of the state, when manners and customs were yet plastic, and when strong characters were certain to leave their impress for years and perhaps for all time. . . . The roll of this early bar is indeed a brilliant one; but to call that roll now would be a melancholy

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\*It is said in the notice of Mr. Cary's career in the report of the American bar association, which notice was written, the editor understands, by Burton Hanson, that at one term of the supreme court of the United States Mr. Cary argued fourteen cases and won them all against such men as Caleb Cushing, Matt. H. Carpenter, Henry A. Cram and other eminent lawyers.

task, so rare would be the answers of 'Adsum.' The names, however, will always shine on the pages of the constitutional journals and the early statute books of the state as well as the reports of this court. High up on this great roll stands the name of John W. Cary. It is true that he came to the state just after its admission to the Union; it is true, also, that his legislative career was comparatively short, but he at once took a deservedly high rank in the profession, and the influence that he thus exerted was unquestionably great. He became a member of a bar at Racine, than which none in the state was then more brilliant. It included either at that time or soon after such great names as Ryan, Strong, Doolittle, Lyon, Sanders and Fuller. Among such men it is high praise to say that as a lawyer Mr. Cary was their peer. While not as brilliant as some of them, none was more evenly balanced, none possessed more of the qualities of the great lawyer. In this bar Mr. Cary's progress was steadily onward and upward. Before many years the logic of events drew him to Milwaukee and placed him in charge of the legal interests of the greatest corporation of the state, if not of the west. In this capacity his ability as a lawyer and advocate was fully tested and his fame was fully and fairly earned. There were no breaks, no disappointing lapses in his career; it was steady, consistent and satisfactory from beginning to end.

"His last appearance in this court was in December last (1895), when he stood at this bar and argued two very important cases, reported in the 89th Wisconsin under the titles of *Combes vs. Keyes* and *Chicago, Milwaukee & St. Paul Railway Company vs. Hoyt*. It was then generally remarked that his thought was as clear, his grasp as vigorous, his diction as lucid as it had ever been. Time seemed to have dealt very gently with him, and there seemed no reason why he should not yet enjoy years of activity and usefulness. But it was not to be. Three months later the end came. It was sudden, but not untimely. Both body and brain were undoubtedly weary after a long, eventful and busy life. His tasks were finished; his work was done; the record was made up; the book closed. 'God's finger touched him, and he slept.' "

## DEWITT DAVIS.

Dewitt Davis, who was for many years an active member of the bar, and who is still a much esteemed citizen of Milwaukee, located there originally in 1857 to accept a position in the public schools, but with a well defined purpose to engage in the practice of law later on. He was a well educated, well balanced young man, who came of rather notable New England ancestry, and who had received in early life that careful industrial and economic training which has always been a prominent feature of the social system in rural New England.

His ancestors on the paternal side were of Welsh origin, but family records fail to disclose the exact date at which the family tree took root in this country. The earliest record obtainable shows that John Davis was born in Derby, Connecticut, about 1650, and it is probable, therefore, that the immigrant ancestor of the family was among the earliest colonists of New England. Descendants of this John Davis were Captain Joseph Davis and Colonel John Davis, whose names figure in revolutionary annals, Colonel John Davis having commanded for a considerable time the second regiment of Connecticut militia. Joseph W. Davis, a descendant-five generations removed of John Davis, of Derby, married Henrietta Newton, and Dewitt Davis is one of the children born of this union.

The Newton family history dates back to 1647, when Roger Newton, who married a daughter of the famous Rev. Thomas Hooker, founder of the Connecticut colony, settled at Farmington, Connecticut, to become the first minister of the gospel in that colony. At a later date he went to Milford, Connecticut, and was the second clergyman who located in that place.

Dewitt Davis was born in the town of Woodbridge, a few miles distant from New Haven, January 31, 1833. He was brought up on a farm of the typical New England kind, which could only be made to support a family when industry and economy on the part of all the members of the household were recognized as cardinal virtues. In early boyhood,



and until he was about eighteen years of age, his time was divided between farm labor and attendance at the public schools of his native town. Having an ambition to obtain what in those days was termed "a liberal education," he left the farm to become a student at Wesleyan university, and being partially dependent upon his own resources, he taught school at intervals to obtain the means necessary to defray his expenses while in college. Before completing the full college course he quitted the university to become principal of an academy at Warren, Pennsylvania. He remained at Warren a year, and while there began the study of law under the preceptorship of Glenni W. Schofield, who achieved distinction during the war period as a representative in Congress from Pennsylvania, and later as a judge of the court of claims at the national capital. From Warren, Mr. Davis went to Milwaukee at the instance of C. K. Martin, with whom he had been intimately acquainted as a student at Wesleyan university. Martin, who had come here a year or two earlier, retired at that time from the position of principal of the old fourth ward school, and Mr. Davis became his successor. His connection with the city schools in this capacity continued three years, and at the end of that time he entered the law office of Butler, Buttrick & Cott-rill, where he completed the course of study necessary to qualify him for admission to the bar. He was admitted to practice in the fall of 1861, and at once formed a partnership with Frederick W. Pitkin—at a later date governor of the state of Colorado—under the firm name of Pitkin & Davis. In 1863 Walter S. Carter, who has since achieved unusual distinction as a lawyer in New York city, became a member of the firm, and this co-partnership continued until 1865, when Mr. Pitkin retired from the association. The firm of Carter & Davis continued in existence until 1869, when Mr. Carter withdrew, and Mr. Davis associated with himself as junior partner, James G. Flanders, then a young lawyer of rare promise, who has since fully realized the expectations of his friends. In 1875 A. R. R. Butler became a member of the firm, the style of which was changed to Butler, Davis & Flanders, and this association continued a year or more, the partnership being dissolved in 1876. Mr. Davis continued the practice alone for a time, and then with one or two changes

of partners until 1881, when the impairment of his health, resulting from close application to professional work, caused him to retire from active practice. His professional career may be said, therefore, to have covered a period of twenty years, and during that time no member of the Milwaukee bar devoted himself more faithfully and conscientiously to the interests of his clients. A capable, well-read and well-informed lawyer, he was especially successful in the conduct and management of commercial law business, and during the later years of his practice he had a large patronage of this character. Regarded always as a candid, judicious and safe counselor, he took rank among the abler lawyers of the bar also in the careful preparation of his cases and comprehensive knowledge of the law involved in litigation with which he was identified. Honorable in his methods of practice, and courteous in his treatment of his fellow practitioners, his relation to the bar during his long connection with it has been such as to leave a pleasing impress upon his professional associates and contemporaries.

In all the other relations of life, as well as in the field of professional labor, his career has been such as to win for him the kindly regard and high esteem of the community with which he has been so long identified. Never an active partisan, he has been a pronounced republican in his political affiliations since the organization of that party. The first office he ever held was that of member of the school board in the early sixties, and in 1864 he was elected a member of the assembly. He was the only republican elected to any office of consequence in Milwaukee county that year, and the result was a somewhat flattering testimonial to his personal popularity. At a later date he was prominently mentioned in connection with one of the local judgeships, but the condition of his health at that time prevented him from giving serious consideration to this suggestion of his friends.

As president of the young men's library association and chairman of the lecture committee for a period of two years, Mr. Davis rendered a valuable service to the city, through his activity in promoting two successful lecture courses which were not only important educational enterprises, but brought to the association considerable funds with which

books were purchased for its valuable library which constituted the nucleus of the present public library.

In 1863 Mr. Davis made a unique trip across the Atlantic, sailing from Milwaukee on the "Hanover," a vessel built and loaded there. He sailed on this vessel as super cargo, and was six weeks making the voyage to Liverpool. After spending some time abroad he came back by steamer, the trip being a most enjoyable one and one to which some historic interest attaches.

During the later years of his life he has devoted much of his time to travel and literature. He is much interested in educational matters, and is at present the president of the trustees of Milwaukee-Downer college.

#### DON A. J. UPHAM.

Don A. J. Upham came to Milwaukee, a scholarly and accomplished young man, to begin the practice of his profession, in 1837, and his professional and public life covered a period of more than thirty years. He was born in Weathersfield, Windsor county, Vermont, on the 31st day of May, 1809. His father, Joshua Upham, occupied the homestead and farm in the valley of the Connecticut river that was first located by his grandfather, William Upham, at the close of the revolutionary war, and which now has been in possession of the family for over one hundred years. The family is one of the oldest in New England. About twenty years ago the late Dr. Albert G. Upham, of Salem, Massachusetts, compiled and published the genealogy of the Upham family, in which he distinctly traced the ancestors of William Upham back to John Upham, who emigrated from the west of England and settled in Malden, near Boston, about sixty years after the first landing of the Pilgrims at Plymouth Rock.

The Upham genealogy, edited by Captain F. K. Upham, and published in 1892, contains a full history of this family, and shows the descent from John Upham of nearly all persons bearing the name of Upham in the United States.

The father of D. A. J. Upham, when he became sixteen years of age, asked him if he could determine on what business or profession he would





*D. A. Stephens*



select, with a determination to follow it for life. After some deliberation he chose the profession of law. He was then immediately sent to the preparatory school at Chester, Vermont, and afterward to Meriden, New Hampshire, and at the age of nineteen he entered the sophomore class at Union college, New York. The late Dr. Eliphalet Nott was then president of that institution.

He graduated in 1831 with the highest standing in a class of about one hundred. In the September following he entered the office of General James Tallmadge, in the city of New York, as a law student. After remaining in this office about six months he found that it would be necessary in some way to raise means to complete his education as a lawyer. On the recommendation of President Nott he was appointed assistant professor of mathematics in Delaware college, at Newark, in the state of Delaware. He held this position for three years, during which time he wrote editorials for the Delaware Gazette, then the leading democratic paper of Delaware, and at the same time he had his name entered as a law student in the office of the Hon. James A. Bayard, of Wilmington, Delaware, late United States senator from that state.

In 1835, after attending a course of law lectures in the city of Baltimore, he was admitted to the bar and commenced the practice of law in the city of Wilmington. He was elected city attorney of Wilmington in 1836. From 1834 to 1837 he was editor and proprietor of the Delaware Gazette and American Watchman, published at Wilmington. In the meantime his attention had been called to the growing settlements in the far west.

After the close of the Black Hawk war, it was said a place called Chicago would soon be a commercial point of importance. In 1836 the territory of Wisconsin was organized, containing within its limits the territory now comprising the states of Wisconsin, Iowa and Minnesota. He determined to explore the western country, and seek a location in which to pursue his profession.

In the spring of 1837 he started for the west, and in June arrived in Chicago by the route of the upper lakes. Chicago was then a very small village and seemed to be located in an extensive marsh, the only high



ground being a few acres on the lake shore, where the old fort was located.

He was not pleased with Chicago. In company with two friends he traveled through Illinois in a farmer's wagon by the way of Dixon's ferry, camping out as occasion required, and arrived at the Mississippi near the mouth of Rock river. He visited Burlington and Dubuque, now in the state of Iowa, and also the mineral regions in western Wisconsin, and endeavored to find some conveyance east through Wisconsin to Milwaukee, but was unable to do so, and was obliged to return by way of Galena to Chicago, and from there by steamer to Milwaukee. The first settlement in Milwaukee of any importance was made the year before. The situation and prospects pleased him, and he finally determined to locate there.

The difficulties attending the practice of the lawyers who first settled in the territory can hardly be appreciated at this day. His first case of any importance was in the supreme court of the territory. At the fall term of the district court a judgment for a large amount had been obtained against one of the most extensive dealers in real estate in Milwaukee, and his new dwelling house and a large amount of property were advertised for sale on execution. He applied to the young lawyer to take the case to the supreme court and enjoin the pending sale. It was necessary that one of the judges should allow the writ of injunction. Judges Frazer and Irwin were out of the territory, and there was no person who could allow the writ except Judge Dunn, who resided at Elk Grove, in the western district, about one hundred and sixty miles from Milwaukee. There were no stage coaches or means of conveyance through the territory. The only practical way was to go on horseback through what is now Rock and Green counties, and the only track for a considerable portion of the way was an Indian trail across the prairies. He accordingly started to make the trip in this way late in November, with barely time to accomplish it.

Mr. Janes had already settled in Janesville, and the miners from the west had a settlement at Sugar river diggings in Green county. These points he reached after having been delayed one day in crossing Rock

river, from the ice and high water. He reached Mineral Point and Elk Grove without difficulty, had his writ allowed by the judge, and on his return to Sugar river found he had but two nights and one day in which to reach Milwaukee before the sale, a distance of about one hundred miles. He started east for the James settlement early in the evening, and as he reached the prairie he found that in places it was on fire, and with difficulty he pursued his route. As the night advanced, it became dark and cloudy, and toward midnight the wind arose and a scene presented itself that baffled description. On reaching high ground the view was extensive, and the fire with the increasing wind spread in every direction. The low grounds, where the vegetation had been rank, appeared to be on fire. As far as the eye could reach, and in every direction, the flames seemed to shoot up to the clouds with increasing violence. The night was dark and not a star to be seen. It seemed as if the last day had arrived, and that the final conflagration of the world was now taking place. The young lawyer found himself surrounded with difficulties of which his knowledge of Blackstone and Coke afforded no solution, and he had at last to bring in his knowledge of other sciences in order to effect an escape. He was lost on the prairie. After diligent search he could find no trace of the trail or track he wished to pursue. He was near half a day's ride from any habitation, and he could not ascertain in what direction he was going. By keeping on the high portions of the prairie where the vegetation had been light, and which was mostly burnt over, he could remain in comparative safety, but to cross the ravines or low ground was impossible, or attended with the greatest danger. For several hours he wandered in various directions, without knowing where he was going. At last the clouds seemed to break away at one point and stars became visible.

The question was to determine to what constellations they belonged. He was not long in doubt, for two clusters of stars appeared, which he recognized as well known southern constellations. He knew these stars must now be near the meridian, and at the extreme south. By keeping them at the right he was now able to pursue a course as far as practicable

in an easterly direction, and at last reached Rock river, about two miles south of Janesville.

He now had one day and night in which to reach Milwaukee, a distance of about sixty miles. With a worn out and jaded horse, this was accomplished with great difficulty. He arrived about one hour before the sale, to the astonishment of the opposing counsel and great joy to his client, who had long been anxiously awaiting his arrival.

Such are some of the incidents that attended the practice of the profession in the early settlement of Wisconsin.

The following year the government lands were brought into market, and the most important business of the lawyers was in proving up pre-emptions to important locations, the sites of future towns and cities. He was employed in the important case of Gilman vs. Rogan, before the land office, in proving up a pre-emption to the land where the city of Beloit is located. After the settlers had obtained titles to their land the practice was not essentially different from that in the older states.

An examination of the territorial court records at Milwaukee shows that Mr. Upham was one of the most active and industrious lawyers of his day, and that his services as counsel and advocate were constantly sought after in the litigation of that period. It has been asserted by some who are acquainted with the early territorial litigation that for many years the practice of Mr. Upham exceeded that of any other Milwaukee lawyer.

Mr. Upham was not a politician in the true sense of the word. He had no taste for the bitterness, animosity and personal abuse that prevailed in the party contests at that time. He filled, however, some important positions. He was several times a member of the territorial council at the earliest sessions of the legislature at Madison. He was a member of the first convention that was called to form a constitution for the state of Wisconsin, and was elected president of that convention. He was nominated by the democratic party for governor of the state as the successor of Governor Dewey. He took no active part in the canvass. The contest was very close and bitter, from dissensions in the party, and the result doubtful, but the state canvassers then at Madison



declared his opponent elected by a small majority. He was twice elected mayor of the city of Milwaukee, being the successor of Juneau and Kilbourn. He was afterward appointed United States attorney for the district of Wisconsin, an office he held for one term of four years. After thirty years' successful practice in Milwaukee he was compelled by ill-health to retire from the profession.

In justice to the memory of Mr. Upham it should be stated that he and many of his friends believed that he was actually elected governor of the state of Wisconsin, but was counted out by means of spurious returns which were made to the state canvassers, similar in many ways to the spurious returns which were made public at a later day in the contest and trial between Bashford and Barstow. The thinly settled condition of the state at that time, the method of conducting elections and conveying the returns made it possible for the unscrupulous to impose false and fictitious returns from distant precincts upon the state canvassers, and lack of means of communication with the remote parts of the state rendered it impossible immediately to discover the impositions. The friends of Mr. Upham later on believed that they had obtained satisfactory evidence showing the errors in votes as counted by the state canvassers, but as this evidence was not obtained until about the close of the term for which the friends of Mr. Upham believed him to have been elected, nothing could be done. The political history of the state by the late A. M. Thompson has information upon this subject.

He was married in 1836 to Elizabeth S., daughter of Dr. Gideon Jaques, of Wilmington, Delaware. The Jaques family was one of the oldest in New Jersey, and descended from the first French Huguenots that came to this country. Mr. and Mrs. Upham left five surviving children, the eldest of whom is Colonel John J. Upham, of the United States army. His eldest daughter, Carrie J., is married to Colonel George H. Raymond, of Smyrna, Delaware; the second daughter, Addie J., is the wife of Henry B. Taylor, Esq., merchant, of Chester, Pennsylvania; and the youngest, Sallie J., is the wife of Chief Engineer George B. Ransom, of the United States navy, who served on the United States cruiser *Concord*, May 1, 1898, in the battle at Manila. The

youngest son, Horace A. J. Upham, is a graduate of the university of Michigan, and a member of the law firm of Fish, Cary, Upham & Black, of Milwaukee.

At the close of the late war, Colonel Upham, on his return from a trip to Europe, brought home and presented to his father an astronomical telescope of large power that had just been introduced into England. It is portable, and intended for private libraries. With the aid of this instrument his father for several years thereafter, as his health and time would permit, reviewed his early astronomical investigations, informing himself of the progress made in that science during the last forty years, and verifying to some extent the computations made annually at the astronomical observatory at Washington. Mr. Upham's life, although not characterized by any remarkable events or achievements, was a useful and honorable one, and noted for great industry and activity. He discharged all the duties devolved upon him as a lawyer and legislator with marked ability and integrity. As a citizen he was public-spirited and patriotic. In his social relations, as husband, father and neighbor, his conduct was not only exemplary, commanding respect, but it was characterized by affection and kindness and by genial intercourse with friends and neighbors. He was in all respects a well-bred, accomplished gentleman, and his impress is visible in his family. Mr. Upham died in Milwaukee, July 19th, 1877, and rests in Forest Home cemetery.

#### WALTER S. CARTER.

Walter Steuben Carter, formerly of the Milwaukee bar, now of New York city, was born in Barkhamsted, Litchfield county, Connecticut, February 24, 1833, son of Evits and Emma (Taylor) Carter. His ancestry is mainly English and Welsh, a single line extending into France. His earliest American ancestor was Elder William Brewster, of the Mayflower, from whom he is eighth in lineal descent. He is also descended from Thomas Gardner, overseer of the first colony of emigrants that landed at Cape Ann, Massachusetts colony, in 1624. Others of his ancestors were of the distinguished companies that came to that colony

with Governor Winthrop in 1630 and to New Haven with Governor Eaton in 1637. Of his English ancestors he is eighth in descent from Thomas Morton, a graduate of Cambridge, who was successively bishop of Chester, 1615; Litchfield, 1618; and Durham, 1632, and whose daughter Ann married David Yale, and, for her second husband, Governor Eaton, of the New Haven colony. A daughter of David and Ann (Morton) Yale married Governor Edward Hopkins of the Connecticut colony, and a son, Thomas, married Mary, daughter of Captain Nathaniel Turner. They were the parents of Elihu Yale, after whom Yale university was named, and the great-grandparents of Ann Yale, who, in 1733, married William Carter, the great-great-grandfather of the subject of this sketch. Mr. Carter is also sixth in descent from Thomas Roberts, the last colonial governor of New Hampshire, and seventh in descent from Governor Thomas Prince, of the Plymouth colony. One of his ancestors owned Breed's Hill, on which the battle of Bunker Hill was fought. Others were courageous protectors of the regicides, while more than a score served in the Pequot and King Philip's wars, and in the general courts of the New England colonies. Three of them were among the thirteen members of the convention which met in 1639 to frame a written constitution for the colony of Connecticut, the first ever adopted by any people, and the leading features of which have since been incorporated in the federal and in most of our state constitutions. He is a grandson of Sergeant William Taylor, who enlisted in the Lexington alarm, from Simsbury, Connecticut, when only seventeen years of age; was at Bunker Hill, Monmouth and Stony Point; served through the war, and was awarded a pension. He is also third and fourth in descent respectively from private Joseph Gaylord and Captain Nathaniel Bunnell, likewise Connecticut soldiers of the revolution.

Mr. Carter's education was obtained in the common schools with the exception of a single term in a private school at Winsted. In 1850 he commenced the study of law with Judge Elisha Johnson, of Plymouth, continuing the following year with Judge Jared B. Foster, at New Hartford, and completed his studies (having meantime taught



school during the winters) with Judge Waldo P. Vinal, of Middletown, in 1855. He was immediately admitted to the bar, and began a successful practice in Middletown. He removed to Milwaukee, Wisconsin, in 1858, where for a short time he was legal assistant in the office of Finches, Lynde & Miller, and later in that of ex-Chief Justice Hubbell. In 1860 he entered into partnership with William G. Whipple, now of Little Rock, Arkansas. In 1863 the firm of Carter, Pitkin & Davis was formed (ex-Governor Pitkin, of Colorado, and DeWitt Davis), which continued until Mr. Carter removed to Chicago in 1869. He there entered into partnership with Frederick W. Becker and Samuel E. Dale under the firm name of Carter, Becker & Dale. This connection was severed after the great fire of 1871, when Mr. Carter removed to New York, as legal representative of the Chicago creditors of the suspended fire insurance companies of that and other eastern cities. Judge Leslie W. Russell, now of the supreme court, became his partner, but returned to St. Lawrence county in 1873, and since then Mr. Carter has had as partners: Sherburne B. Eaton, Eugene H. Lewis, ex-Governor Daniel H. Chamberlain, William B. Hornblower, James Byrne, Lloyd W. Bowers, Paul D. Cravath, John W. Houston, George M. Pinney, Jr., and Frederic R. Kellogg. His present firm—Carter, Hughes & Dwight—has for members Charles E. Hughes, Edward F. Dwight, Arthur C. Rounds, Marshall B. Clarke and George W. Schurman.

In politics Mr. Carter is a republican. He has never sought office, and when he was nominated for the legislature in Middletown he declined. The only official position he has ever held was that of United States commissioner and master-in-chancery of the United States court in Wisconsin, which he held but a short time. He, however, has frequently served on committees and as delegate to political conventions, and in 1869 was manager of the senatorial campaign in Wisconsin, which sent Matthew H. Carpenter to the United States senate.

Mr. Carter shows his interest actively in educational matters, was on the board of education in Middletown; while in Milwaukee was a trustee of Lawrence university, and at present is one of the trustees of Syracuse university. Being an extensive traveler in foreign lands, Mr.

Carter has had the opportunity to indulge his taste for art treasures, and he is the possessor of one of the finest framed collections of etchings and engravings in the world. In Milwaukee, in 1892, he delivered a lecture on the masterpieces of reproductive etching and engraving, which probably gives the most minute and careful description of the processes of etching, line, mezzotint and stipple engraving yet published. Mr. Carter belongs to the Methodist Episcopal church, and is the vice president of the board of trustees of the New York avenue church of Brooklyn, to which church he lately presented one of the largest and finest organs ever constructed. He also holds the position of trustee in the church of which his grandfather was one of the founders in his native town. He has served as Sunday school superintendent, class leader and steward, and in charitable work has lent generous aid. He is one of the few surviving members of the Christian commission, having held the position of chairman to the Wisconsin branch of that great charitable organization, of whose work at the battle of Nashville he published in the *Northwestern Christian Advocate* an account which was afterwards republished in the official history of the commission.

In clubs and societies Mr. Carter has a wide membership. He belongs to the republican and Union League clubs in Brooklyn, where he resides, and has been upon the art committee and one of the governors of the latter club. He was one of the incorporators and is a life member of the Brooklyn institute of arts and sciences, and since 1892, when he succeeded Dudley Buck, has been president of its department of music. He is a trustee of the homœopathic hospital association, a member of the New England society, and the Long Island historical society. In New York he belongs to the Lawyers', Grolier and Clef clubs, is a member of the manuscript society, and was the first lay-honorary associate of the American guild of organists. He is also a member of the American historical association, the American geographical society, the American museum of natural history, the metropolitan museum of art, the New York genealogical and biographical society, the New York historical society, the New York zoological society, the Sons of the Revolution, the Sons of the American Revolution, the society of May-

flower Descendants, the order of the Founders and Patriots of America, and America's Founders and Defenders, of which last he was the founder. He is a member of the New York state bar association, the American bar association (being upon the committee on uniform state laws of the latter), and an honorary member of the legal fraternity of Phi Delta Phi.

Mr. Carter has been three times married. By his first wife, Antoinette Smith, of New Hartford, Connecticut, who died in 1865, he had four children: Dr. Colin S. Carter, a well-known dental surgeon of New York; Emma, who married Reverend E. H. Dickinson, pastor of the North Presbyterian church of Buffalo; Antoinette, wife of Mr. Hughes of the firm of Carter, Hughes & Dwight; and one son, who died in 1887, George S. Carter, educated at Columbia college and the Harvard law school. His second wife, Mary Boyd Jones, of Frederick, Maryland, died in 1869 without issue. In 1870 he married Harriet Cook, of Chicago, by whom he has two children, one of whom—Walter F.—was graduated from Yale in 1895, and was the famous pitcher of the baseball nine; his younger son, Leslie T. Carter, will not enter college, and is studying law in his father's office.

Mr. Hornblower, who, it will be remembered, was nominated by President Cleveland for a seat on the bench of the supreme court of the United States, wrote of Mr. Carter to the editor of the *Banking Law Journal* thus: "In my opinion, Mr. Carter's most noticeable characteristics are a most extraordinary memory for names and faces, a most remarkable familiarity with the surroundings, antecedents and character of prominent men in all callings of life, and a readiness and alertness of mind in dealing with the practical bearings of legal questions. While disclaiming for himself any profundity of legal acquirements in the shape of book-learning or any fondness for research among authorities, he has a great faculty for apprehending the legal questions involved in any matter presented to him. He has also a most unusual geniality and cordiality of manner, which adds greatly to his success in professional dealings with his clients and with other lawyers." Mr. Lloyd W. Bowers, of the legal department of the Chicago & Northwestern rail-





road company, has written thus of his former partner: "I believe Mr. Carter's most marked characteristics to be great energy, a keen knowledge of human nature, splendid judgment of men and fine business tact. He knows more men than any one I ever was acquainted with, and can tell you more about them. Whatever subject he takes hold of he believes in going to the bottom of, and to that end he always uses indefatigably the best means of investigation. To these qualities ought certainly to be added a strong and generous friendship for young men. He always has in his office a number of students whose ability has recommended them to him and whom he offers every advantage and the best of treatment, with rapid promotion if deserved. He is also a fine speaker, as a speech made by him to a deserving Harvard student, who had applied for a position, conclusively shows: 'Mr. ———, I am sorry I have no place for you, but I am very glad I can make one; you can go to work, and your salary begins now.' He told the truth; he had no place, but he took the meritorious applicant all the same."

In 1859 Mr. Carter compiled "The code of procedure of the state of Wisconsin, as passed by the legislature in 1856, and amended in 1857-58-59, with an appendix, containing the rules of the supreme and circuit courts, the time of holding the terms of court in the various circuits, and of the United States district court."

#### JOHN J. ORTON.

The following quotation from a letter written ten months previous to his death by Mr. Orton to a former classmate at Yale, gives a brief history of some of the most important events in his life:

"I was born in the town of Brookfield, Madison county, New York, April 25, 1812—to-day, 71 years, 364 days—early in the morning, a farmer's boy. Common school until 11; went into store; became merchant at 21, earned some money; went to Burr seminary, Vermont, in '36; prepared for college: at Yale, '38-42. Crash of '37 cleaned me out. Came out of college poor; studied law—last resource of a poor student. To support myself the while, kept books in bank of Orleans, New York. Went to Albany; entered name as law student in office of S. D. Law.





*J. D. Weston*



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Admitted to practice in old supreme court of New York city in May, 1847. Too poor to practice law; went into merchandising again—wholesale lumber at Buffalo, '47-'49. Went west in '49; landed at Milwaukee on a visit to see my two brothers. Became engaged in merchandising in real estate there. Made money in '52-'53. Got into the Noonan and Orton litigation, which lasted until Noonan broke down, went into bankruptcy, and died in the mad house in 1881-2—say about thirty years. So that from '53 to the present, I have had to be a lawyer, *ex necessitate*—in self-defense. Sixty-five lawyers were employed in a long guerrilla fight commenced against me to overthrow me. I won—was not overthrown—never have been. Opposing lawyers were directed to show no quarter, and I defended on that plan: fought the battle as it was laid, succeeded to my satisfaction in the overthrow of Noonan, and, am happy to say, the most of his merciless crew of lawyers. Truly I have fought a fight, and I hope a good one. We are told of those who, of old, fought wild beasts at Ephesus. But I have fought devils incarnate; and have felt sometimes in the past that hell was empty, and all the devils were here. My will and good courage have carried me through, almost alone, for when one is assaulted, all false friends flee."

Mr. Orton was a man who relied upon himself for his advancement, and he learned the need of it in the very beginning. His father, Harlow N. Orton, was a member of the medical profession, and in the year 1817 moved with his family from Cambria, Niagara county, New York, as one of the earliest settlers of that part of the "Holland Purchase."

After obtaining a good common school education, at the age of eleven the subject of this sketch became a clerk in a dry goods store at Albion, Orleans county, and remained with the same employer until he went into partnership with him at the age of eighteen. He was a remarkably steady and industrious youth, of kind disposition, even temper and very genial and pleasant manners. He was the most popular young man in the county, and known by all by the familiar name of "John." He was fond of humor, and very much given to wit and repartee. He had a genius for music, both vocal and instrumental, and

was the organist of the Presbyterian church at Albion, of which he became a member at an early age, and for many years was superintendent of the Sabbath school. He was fond of reading, studious in the intervals of his work, and became a most excellent and thrifty merchant. His greatest intellectual force was mathematical, and he was a "ready reckoner," if not a "lightning calculator." The old Orleans county bank failed, and he was appointed the agent or commissioner to close up its affairs, which he did with general satisfaction, and he held with credit to himself other positions of responsibility and trust. He nearly prepared himself for college in his counting room, and having disposed of his business, finished his course of preparation at Middlebury, Vermont, and entered upon a classical course at Yale college, and at the end of four years was graduated with honor. Immediately afterwards he read law, and was admitted to the bar in the city of New York. He then formed a partnership with Isaac Sherman, to manage the entire lumber business of Detroit & Co., of Albany, at Buffalo, and to buy and forward all the lumber of that market. He made considerable money in that enterprise, and at the end of a few years Mr. Sherman became a banker and broker in New York city, and wished his friend and partner to join him in that business. But John J. had two brothers—Myron H. and Harlow S. Orton—and as he had never been near them since his childhood, and as they were residents of Milwaukee, he decided to pay them a visit, and upon arrival there he saw openings for business that seemed profitable, and led him to a number of investments which afterwards became so urgent in demanding his personal attention that he concluded to settle there and make it his home. That visit was paid in 1850, and after deciding to remain he became a member of the firm of Orton, Cross & Orton, in the practice of law. By the investments spoken of above he laid the foundations of a very large fortune; but out of them arose the long litigation that formed one of the main labors of his life, a contest that has become a part of the legal history of Wisconsin, and that ran for many years, and ended in his final triumph and complete vindication. Of that contest Mr. Orton himself wrote:

"In my operations I was compelled to take what is known here as



the 'Humboldt property' on some advances I had made upon it in default of payment. This property lies about three miles north of the court house on the Milwaukee river, and consisted of a water power, dam, mills, etc., and a large tract of land. The incident referred to grew out of a lease of part of the water by my grantors to one J. A. Noonan and his partner, P. McNab. I bought this property in 1852, and soon after Noonan commenced a litigation with me on account of this lease, which lasted about twenty-five years. This was the first law suit I had ever had with anyone. I soon found I was engaged with a mammoth litigant—one who meant my ruin in a series of vexatious law suits. In the meantime, suits had multiplied between us to over a score. I have conquered after a contest of a quarter of a century and over one hundred law suits, in which between forty and fifty lawyers have been pitted against me, and thirty-six opinions written in the supreme court of the state in these Noonan and Orton cases."

This extended litigation was ended only a short time before his death, and his final success was a source of great comfort to him, as it was evidence that he was right. Mr. Orton conducted his own cases and in every turn and movement showed himself in the possession of exhaustless resources of legal knowledge and skill, and of a will that was like adamant. In his very first argument before the supreme court of Wisconsin, it has been said by one competent to speak, "he measured lances more than successfully with his adversaries, gaining a legal point in the decision that ultimately saved his property and laid his most formidable foes in the dust."

From that time on his suits were all brought and defended by himself in person, no matter what the array of counsel against him. His style of legal oratory was peculiar. It had all the clearness and precision of statement that marked the best efforts of the Wisconsin bar, combined with a certain amount of wit and humor, which won for him confidence and marked attention.

Regarding these suits brought against him as wholly vexatious and annoying, he not only chafed under them but he fought them valiantly. None could hear him without feeling that he was a man gigantically

wronged, one fighting because he was obliged to fight. He invariably carried the sympathies of the jury and audience with him, and if defeated at a given point he had the encouragement to fight on.

Mr. Orton had also a large practice in his profession outside of his own suits, and in general practice ranked high among the able men of the bar of the state.

There was so much in the bearing and character of John J. Orton that was never understood, and so much more that was misunderstood by the people among whom he for so many years lived, that any mention of his life would be incomplete that did not touch upon the change that was wrought in him by sad circumstances that would have changed the gentlest soul that ever lived.

When he first settled in Milwaukee he considered himself permanently located, and, having been prosperous in business, he hoped to spend the rest of his life in happiness, and brought to his home one whom he had long loved, a daughter of one of the families of New Haven county, who was beautiful in her girlhood and upon whom no shadow had been cast when he met and won her love. Upon the peace, purity and manifold blessings of the marriage relation as the foundation, he had built all the hopes of his future life. He was a faithful member of the church and a well-established member of society. But alas! there fell upon him suddenly the revelation of an unfortunate infirmity in his newly made wife, and that, with the knowledge of the deception that had been practiced upon him in repayment of his love and trust, came like the breaking of the anchor chains that had held him fast in the harbor of peace and hope, letting him drift into a strange and stormy career so unlike his former self. He was divorced, but the harm had been done. The effect upon the life of John J. Orton was instantaneous and terrible. For awhile he abandoned the practice of law, worked early and late, and immersed himself in business that he might drown other thoughts. He became gloomy, hard and harsh where he had been cheerful, liberal, genial and generous. When he forgot his troubles, turmoils and cares, he was the finished scholar, the polished gentleman, and genial friend, and read classics and modern authors and

loved to discuss questions of science, literature and art. These unfortunate events occurred soon after he came to Milwaukee and were known to but few, and scarcely remembered by those most familiar with his early history.

The outspoken openness of Mr. Orton's character in youth is dwelt upon with the tenderness of recollections of olden days in the "Classic Letter" of his Yale college associates for 1885, wherein it is said in connection with the announcement of his death: "We all knew and loved John Orton in college. He was of ardent temperament, frank and outspoken in his address, of genial, kindly nature, social in his disposition, and capable of strong attachment to his friends. He was, even in college, a marked character for his independence of spirit. He was the oldest man of the class, and often, in a pleasant, jocose way, would assume the role of paternal guardianship over those of the class with whom he was the most intimate. He was accustomed to addressing them as 'Soboles,' to indicate their youthful verdancy as compared with his larger experience of life. When our college days were ended, and a group of us had come together for the last time in one of our rooms to have a good talk before the final parting, John Orton was with us, and with no one of the group was the last hand-shaking and the last farewell more hearty and prolonged than with him. We saw but little of him from that sad day."

The severe honesty of his early life was preserved through the after years, and no charge of dishonest dealings or of departure from strict justice or integrity could be advanced against him in any of his business relations. Of his legal qualifications it has been well said: "As a lawyer he must have subscribed, mentally at least, to the ancient oath of English barristers: Present nothing to the court in falsehood, but make war for our clients." He did make war for them, and in that aggressive, earnest and stormy way that generally brought victory. As a lawyer his mind was intuitive and far-seeing. He founded all arguments upon the immovable rock of natural law, and many of his pleadings in cases of wrong and oppression wreaked upon the poor and weak by the rich and strong, were considered of the highest order. His in-



dustry was great. He possessed a deep knowledge of books, while his memory was comprehensive and accurate. While the style of composition employed in his legal papers was generally bold, it was always scholarly, always clear and able, and often beautiful and eloquent. He would always take cases where the poor had been wronged, without fee or hope of reward, and fight them through with unexampled vigor and almost universal success. His secret charities were numerous, as those who stood close to him can well testify; and in behalf of those who were struggling with some injustice that threatened to overwhelm them he put forth the most vigorous efforts of his life, never retreating until the wrong had been righted, or the last method and means of procedure had been exhausted.

The end of Mr. Orton's busy life came quietly on the evening of Saturday, January 24, 1885. He had been in good health until about a month before his death, when he was taken with erysipelas, which neither the skill of his physicians nor the loving and devoted attentions of his wife and daughters could deter from its fatal work. News of his death was received with sincere mourning by his large circle of friends, and especially by the many poor and lowly, whom he had quietly helped with his means, or whom he had defended against those who had marked them as easy prey. The funeral services were held at the family home on Mason street, and the remains were borne to their last resting place in Forest Home cemetery by leading members of the Milwaukee bar, while among the many mourners present from other parts of the state were all the members of the Wisconsin supreme court, of which Mr. Orton's brother, Hon. Harlow S. Orton, was an honored member.

May 16, 1864, Mr. Orton again united in marriage with Mrs. Lucinda Keith, born in Newberry, Vermont, January 9, 1834. Her parents were both of English descent. At the age of nine years Mrs. Orton, with her parents, became residents of Boston, Massachusetts, where she was educated. This union proved a great blessing to Mr. Orton, and while his life was blighted by his first marriage it was made truly happy by the last, proving that often man's last days are his best.

This union was blessed with two daughters, Amy C. and Eva M., to whom Mr. Orton was greatly attached.

#### WILLIAM W. WIGHT.

William Ward Wight, of the Milwaukee bar, was born in Troy, New York, January 14, 1849; graduated from Williams college in 1869, with the philosophical oration, the first prize for excellence in French, and with membership in the honorary society of Phi Beta Kappa; taught the ancient languages at the Delaware literary institute, Franklin, New York, for two years, and graduated at the law department of Union university, Albany, in 1873, with the degree of bachelor of laws. Began to practice his profession in New York with his uncle, Edwin Mather Wight, but was driven by ill health to other fields. He opened a law office in Milwaukee, Wisconsin, in 1875, where he has practiced ever since, except during a brief trip to Europe in 1880. Continuously since 1875 he has been the librarian of the Milwaukee Law Library association. He was the originator and promoter of the plan for a public library in Milwaukee, by turning over to that city the 10,000 volumes of the Young Men's association; he was likewise the originator, in Milwaukee, of the civil service reform association, from which has since sprung the non-partisan board of fire and police commissioners in that city. Of this board Mr. Wight was appointed chief examiner October 12, 1886, and resigned February 13, 1889. On December 1, 1888, he was commissioned a member of this board to fill a vacancy; on March 28, 1889, he was elected chairman of said board, and was continued as a member of it until June, 1897. In 1880 he was elected secretary of the trustees of Milwaukee college, and in 1887 was chosen a trustee, both of which offices he has held continuously since; is now a trustee and secretary of Milwaukee-Downer college, which, in 1897, succeeded Milwaukee college. Since 1896 he has been a trustee of Immanuel Presbyterian church, and in 1890-92 was president of the Young Men's Christian association, of Milwaukee; he declined a re-election to that position. He is a life member of New England Historic Genealogical society and of the State Historical society of Wisconsin; for two years

he has been a vice president of the latter. He is also a member of the American Historical association; of the Minsink Valley Historical association, and of the Dedham (Massachusetts) Historical society. He is chairman of the committee on necrology and biography of the state bar association of Wisconsin. At the semi-centennial exercises in Madison in June, 1898, Mr. Wight represented the lake shore region at the historical meeting. He was one of the organizers, in December, 1895, of the Parkman club, of Milwaukee, and, in January, 1890, of the Wisconsin Society Sons of the American Revolution, of which he has been registrar since then, and also one of the original members of the Wisconsin Society of Colonial Wars; of this, too, he has been an officer. He is also a member of the Milwaukee club and the Deutscher club.

In 1887 Williams college conferred upon Mr. Wight the degree of A. M.

The multiplicity of Mr. Wight's duties have not prevented his doing work in the book line, among his productions being some of interest and value to lawyers—Wisconsin Form Book, revised edition, 1889; also table of cases decided by the supreme court of Wisconsin, 1881; Lord Mansfield's Undecided Case (these are more particularly mentioned in chapter VIII), and a paper on early legislation concerning Wisconsin banks, published in the proceedings of the state historical society, 1895, pp. 145-161. His paper Eleazer Williams, his forerunners, himself, in the Parkman Club's series, has been held effectually to dispose of the claim that the said Williams was the Dauphin of France.

As a lawyer Mr. Wight always preferred and has been successful in office work; he hesitates to try jury cases. The conviction that he possesses the judicial quality in a high degree induced a large number of his brethren of the bar and other residents of Milwaukee to urge him to become a candidate for county judge in 1897. Though unsuccessful, he received a cordial support from many of the electors, and a vote which he considered highly complimentary.

Mr. Wight married in Milwaukee, June 29, 1876, Sarah Emily West, who died February 1, 1877; June 16, 1884, he married Mary Olivia Brockway; she died July 24, 1885; March 21, 1893, he married Susan



Elizabeth Lowry, of Milwaukee. He has two children—Edward Brockway, born July 8, 1885; Elizabeth von Benschoten, born August 21, 1894.

#### EDWARD PERRIN VILAS.

Edward P. Vilas, of the firm of Winkler, Flanders, Smith, Bottum & Vilas, one of the strongest and most prosperous legal copartnerships in the northwest, is a native of Madison, where he was born on the 6th of November, 1852. His parents were Levi B. and Esther G. (Smilie) Vilas, his father being for nearly twenty years one of the leading lawyers and statesmen of Vermont, and for more than a quarter of a century a public man of marked ability in Madison and throughout the state of Wisconsin. Cultured, generous, honest and energetic, Judge Vilas was a father of whom any son, however talented himself, might well be proud. For eighteen years he successfully practiced his profession in the Green Mountain state. As a leading democrat, in 1835, he was a member of its constitutional convention, afterward serving for six years in the lower house, two years in the state senate, and three years as probate judge. His reputation for unusual ability and probity became so widely extended that in 1848 he was brought forward by the democracy as a congressional candidate. But even in those days that party was in the decided minority, so that notwithstanding Judge Vilas' personal popularity, he proved to be the unsuccessful candidate. Removing to Madison in 1851, he was soon adopted as a leader of public affairs. He represented his district in the assembly three times, was mayor of the city, draft commissioner in 1862, and for twelve years regent of the state university. His death occurred in 1879.

As previously stated, Edward P. Vilas was born the year following his father's removal to Madison. After attending the public schools he entered the state university, graduating from the college of letters in 1872. (After graduating from the university in 1872, Mr. Vilas entered the office of the Chicago & North-Western railway, being private secretary of the division superintendent, and in this capacity he mastered many details of the railroad business which were of subsequent benefit





*Alfred L. Cary*





Alfred L. Cary

to him in his legal practice.) On leaving the railway he first studied law in the office of Vilas & Bryant, and subsequently took a regular course in the law department of the university, from which he was graduated in 1875 with the degree of LL. B. During the summer of 1875 he was admitted to practice before the state supreme and the United States courts and became associated with the firm of Vilas & Bryant, consisting of his brother, William F. Vilas, and E. E. Bryant. He thus continued until 1885, when the partnership ceased by reason of his brother's appointment as postmaster general and Gen. Bryant's acceptance of the position of assistant attorney general of the United States. Mr. Vilas then practiced alone until 1888, removing to Milwaukee on June 1st of that year, and becoming a member of the firm of Jenkins, Winkler, Smith & Vilas. In July, 1888, Judge Jenkins was called to the United States bench, which brought about the present style of the firm.

While a resident of Madison, Mr. Vilas was for several years a court commissioner, and since 1885 he has been secretary of the state bar association. Twice he has been appointed by Governor Peck a trustee of the Milwaukee asylum for the insane, resigning from the board in June, 1896. He has always been a democrat—in the latter days a gold democrat. He has been prominently identified with such clubs as the Lawyers', Milwaukee, Country, Deutscher and the Rho Chapter of the Psi Upsilon Fraternity—the last named being a university organization.

Mr. Vilas was married in 1877 to Elizabeth Gordon Atwood, daughter of David Atwood, a pioneer of Wisconsin, and for many years the owner and editor in chief of the "State Journal," Madison. They have one son, Charles Atwood Vilas, now a student at the state university. Mrs. Vilas is a woman of culture and force of character. She is a member of the Daughters of the American Revolution, serving as the first regent of the Milwaukee Chapter. She is also at present the president of the atheneum, and is a member of the woman's club.

#### ALFRED L. CARY,

Alfred L. Cary, one of the most prominent corporation attorneys in the northwest, and member of the firm of Fish, Cary, Upham & Black,

is a native of Sterling, Cayuga county, New York, where he was born July 3, 1835. His parents were Nathaniel C. and Sophia (Eaton) Cary, his American ancestry, on his father's side, being traced to John Cary, one of three brothers who settled in Massachusetts in the seventeenth century. Alfred's father was a man of character, prominent in the town in which he lived.

The boy passed his early days in Sterling, where he attended the district schools up to his sixteenth year. Later he entered the high school of Racine, Wisconsin, at which time John G. McMynn was its principal and was then and since known as one of the best educators in the west. In fact, the youth was drawn to that city by the latter's fame as a teacher, and for two years, 1853-1855, enjoyed the benefits of his instruction.

Mr. Cary afterwards returned to the east and engaged in teaching. But although a competent and successful teacher, he realized that his own education was not complete and consequently, during intervals in his teaching, he attended Falley seminary at Fulton, New York. In 1858 he returned to Racine and entered the law office of his uncle, John W. Cary, afterwards known throughout the country as a great corporation and railroad lawyer.

When the latter removed to Milwaukee, in January, 1859, Alfred continued with him as a student and clerk. In 1861 he was admitted to the bar of the circuit court for Milwaukee county, Arthur McArthur being then the presiding judge of said court. In 1865 he became a partner with his uncle in the practice of the law, the style of the firm being J. W. & A. L. Cary; J. P. C. Cottrill was added in 1870, and when John W. Cary became general solicitor of the Chicago, Milwaukee & St. Paul Railway Company in 1874, necessitating his retirement from general practice, the firm became Cottrill & Cary and so remained until June, 1882, when Burton Hanson was admitted. Several years afterwards Mr. Cary withdrew to assume the position of general solicitor of the Milwaukee, Lake Shore & Western Railway Company. During the eleven years of his service in that capacity he acquired a wide reputation for business-like methods, executive force and profes-



sional ability. In 1893 the company was absorbed by the Chicago & North-Western Railway Company, and in February, 1894, Mr. Cary formed a partnership with John T. Fish, under the firm name of Fish & Cary. As Mr. Fish had himself been connected with the Chicago, Milwaukee & St. Paul railroad for many years as general solicitor of the company, the two formed a combination of talent which had no superior in the northwest in the domain of corporation law, especially as relating to railroad litigation.

In the course of his long and successful professional career Mr. Cary has been engaged in many cases involving large sums and intricate and important legal questions. One of the most remarkable suits in which he became interested was that of the Michigan Insurance bank against Anson Eldred. It was commenced in 1862 in the United States circuit court for the district of Wisconsin, and the defense was then in charge of John W. Cary, but it subsequently fell to the care of A. L. Cary. The case was carried to the United States supreme court four times and finally, after a litigation extending over a period of more than thirty years, was compromised. Mr. Cary has also been employed for twelve or thirteen years in a very important litigation involving the title to various water power privileges on the Fox river at Kaukauna, he being the representative of the corporation known as the Kaukauna Water Power company.

In 1893 Judge Jenkins, United States circuit judge for the seventh circuit, appointed him special master in the Northern Pacific railroad foreclosure cases, and one of the important special matters referred to him as such master was the petition of the company for the removal of Mr. Oakes as receiver. The taking of testimony in this matter at Milwaukee, Chicago and New York, hearing the arguments and considering the same, occupied the master's time continuously for over five months, so that his report was not filed until September 8, 1894. In 1896 the Northern Pacific railway land grants and other property were decreed to be sold under the decrees entered in the foreclosure cases, and Mr. Cary was appointed master to make such sales and did make them the latter part of July and August of that year, and in doing so

had to make a trip over the entire main line of the Northern Pacific railroad and conduct a sale in every state except Minnesota through which such railroad is located. To give some idea of the magnitude of the interests involved in his charge as special master, it may be stated that claims amounting in the aggregate to nearly \$100,000,000 have been filed with him for adjudication.

In politics Mr. Cary is a democrat. He was elected to the common council of Milwaukee in 1872 for a term of two years, and in 1874 was a member of the lower branch of the state legislature, serving during the famous Granger session and vigorously opposing the so-called "Granger legislation." He is a Knight Templar in the Masonic order, and is a member of the Old Settlers, Country and Milwaukee clubs, having served as president of the last named for six years.

He was married September 6, 1864, to Harriet M. Van Slyck of Milwaukee, daughter of Jesse M. Van Slyck, an old and respected citizen. They have four children—Robert J. Cary, a bright young lawyer in Chicago; Walter Cary, secretary of the Gibbs Electric company of Milwaukee, and Harriet S. and Irving B. Cary, the last named a student at the university of Wisconsin.

#### GEORGE W. LAKIN.

George W. Lakin was born in Harrison, Cumberland county, Maryland, March 29, 1816. He was educated at the Wesleyan seminary at Readfield, Maine, graduating in 1837. In the same year he taught school in Livermore, Maine, boarding in the family of Israel Washburne, father of the noted family of congressmen by that name. He commenced the study of law in 1838, at Readfield Corners, came to the west in 1839, spent some time in Missouri, and was admitted to the bar of that state in 1841. After admission to the bar he came at once to Wisconsin and opened an office at Platteville, Grant county, in the same year.

In 1847 Mr. Lakin was elected as a representative from the county of Grant to the constitutional convention, and in that body served on the committee on banks, banking and incorporations. He took promi-







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nent part in the discussions in the convention, speaking upon many of the most important subjects before it. He had a strong mind, highly cultivated, and, possessing an excellent voice, his speeches were always listened to with marked attention. In 1848 he was elected a member of the state senate, in which body he served two years, ranking among the ablest men in it, and was valuable and useful in shaping the affairs of the state government.

He was appointed United States district attorney for Wisconsin in 1849, by President Taylor, and held the office until the close of Mr. Fillmore's term in 1853, discharging the duties of the position with marked ability and fidelity to the interests of the government. In 1854 Mr. Lakin removed to the city of Milwaukee, where he has ever since devoted his time to the practice of his profession.

#### THOMAS LATHROP KENNAN.

The original stock from which Thomas L. Kennan was descended, on the paternal side, belonged to that class of sturdy pioneers who are known in this country as Scotch-Irish or Scotch Presbyterians, who were driven out of Scotland by the persecution and fled to the north of Ireland. On the maternal side his ancestors were from England.

Captain Richard Kennan located with his family in Virginia prior to 1670. One of his descendants, General Richard Kennan, was appointed by President Jefferson first governor of Louisiana. His son, Commodore Beverly Kennan of the United States navy, married Britannia Wellington Peter, of Georgetown, D. C., who was a great-granddaughter of Martha Custis, wife of George Washington. He was killed by the explosion of a gun on the frigate Princeton in 1844, at the time Secretaries Upshur and Gilman of President Tyler's cabinet lost their lives. James Kennan, who was the ancestor of the northern branch of the Kennan family, was living in Massachusetts as early as 1734 in Worcester county.

One of his sons, Col. George Kennan, was the great-grandfather of Thomas L., and an officer in the revolutionary war from Massachusetts, and, later, prominent in the public affairs of Vermont. One of his sons,

Jairus Kennan, was a professor in the state university of Vermont and is said to have been a collaborator with Washington Irving in the writing of *Salmagundi*.

Another son of Col. George Kennan was the Rev. Thomas Kennan, a Presbyterian clergyman of standing in the Green Mountain state, and later of the state of New York. He was the grandfather of Thomas L. Kennan and of George Kennan, the distinguished Siberian traveler and author. The eldest son of the Vermont clergyman was George Kennan, who, in 1816, married Mary, the daughter of Captain Chester Tullar, and a few years later removed to Morristown, St. Lawrence county, New York, where he established himself and his family as among the earliest and most respected pioneers of that section of the state. The eldest son of the family, which eventually consisted of four sons and six daughters, was the subject of this sketch, Thomas L. Kennan; place of birth, Morristown, and date, February 22, 1827. The boy worked upon his father's farm, attended the best schools that the country afforded, and showed his enterprise as well as his eagerness to make the most of himself, by inducing some of his companions to club their means and engage the services of a private instructor, who could impart knowledge beyond the scope of the average district teacher. Thomas made such progress that at the age of seventeen he was an instructor himself, and a year later left home as a strong, ambitious, self-reliant young man. In 1847, while still in his minority, he settled at Norwalk, O., in order that he might enter the law office of his uncle, Jarius Kennan. After being admitted to the bar, in 1851, he removed to Oshkosh, Wis., to practice his profession, two years later forming a partnership with Judge Wheeler, who had been a former resident of Neenah. In 1855 Mr. Kennan made another change of location to Portage, having two years previously been admitted to practice in the state supreme court. It was during this epoch of his career that he became well known as a criminal lawyer, but this branch of the practice, being distasteful to him, he abandoned it and thereafter devoted his attention to civil business.

Upon the breaking out of the civil war, Mr. Kennan recruited a



company and early in the fall of 1861 was mustered into the service at Milwaukee, as first lieutenant of company D, 10th Wisconsin infantry. Subsequently, although unanimously elected captain and thus commissioned by the governor, he declined the promotion in favor of a more experienced officer. The winter following was assigned to staff duty, and while at Nashville, Tenn., was thrown into quite intimate contact with Andrew Johnson, then military governor of the state. Mr. Kennan's health failed, however, and in July, 1862, he was obliged to resign his position not only to his own regret but to the regret of all who had dealings with him.

For the restoration of his strength he retired for a time to his large stock farm in Marquette county, not neglecting, however, to champion with voice and pen the Union cause to which he had given his heart and soul. He was elected president of the county loyal league and in 1863 received the appointment of deputy provost marshal and served the government in that capacity until the cessation of hostilities.

Although Mr. Kennan has never sought political preferment, his name has often been suggested for high official positions, but he steadfastly declined all such honors.

After regaining his health he returned to Portage, and energetically and successfully resumed the practice of his profession.

Within the succeeding decade he built up a large and profitable general practice, which was diverted more or less into the channels of corporation, and, especially, railroad law. It was during this period (in 1876) that he was admitted to practice in the supreme court of the United States. In 1880 he was induced to give up his general practice and accept a position with the Wisconsin Central Railroad company as its attorney, and to the intricate legal interests of this great corporation Mr. Kennan devoted the following ten years of his professional life. He then resigned, in order that he might take life a little more easy and give more attention to his extensive private affairs.

In 1883 he removed to Milwaukee, where he became largely interested in real estate, as well as acquiring valuable property in Ashland and Chicago. After resigning his position as attorney for the railroad

company he not only invested more extensively in landed property, but in such active business enterprises as gold and iron mining. So that at the present time he is not only a successful practitioner but a financier of wide reputation. He is president of a prosperous real estate company in Milwaukee; president and active manager of the Livingstone Gold Mining company and of the Milwaukee & Colorado Gold Mining company of Boulder county, Colo.; is largely interested in iron mining on the Gogebic Range; and a director and stockholder in a national bank as well as a shareholder in a number of other manufacturing and business enterprises.

Mr. Kennan has long been a member and for many years was a trustee of Immanuel Presbyterian church. He is a member of the Loyal Legion of the G. A. R., and of the Masonic fraternity (thirty-second degree). His handsome residence on Prospect avenue is the appropriate symbol of a cultured, beautiful home. The wife and mother, to whom Mr. Kennan was married in 1850, was formerly Miss Loa Brown, of Norwalk, O., the little town where his career as an able lawyer, a courageous, honest and successful man, and a refined and Christian gentleman was thus happily inaugurated nearly half a century ago. Six children have been born to them, divided equally as to sex, and all honorable members of society.

#### WILLIAM J. McELROY.

William J. McElroy, one of the prominent members of the younger class of Wisconsin practitioners, is of Scotch-Irish descent; his parents were Samuel and Mary McElroy. The early portion of their married life was spent at St. Stephens, Canada, from which place they removed to Berlin (then Strong's Landing), Wisconsin. Here, on the 8th of January, 1856, was born William J., the subject of this sketch, his father having purchased a farm near the city. This, the family homestead, where he spent his boyhood days, was also the scene of the father's death in December, 1891, at the age of eighty-two years. The mother died in 1895. Both were faithful and influential members of the Methodist Episcopal church, being among those who organized the first so-

ciety of that denomination in Berlin. Mr. McElroy was an earnest abolitionist and republican, and during the last ten years of his life an ardent prohibitionist.

The youth spent his first eighteen years upon the farm, attending also the public schools and the high school of Berlin, graduating from the latter institution in 1876. He then enjoyed a two years' course at the University of Wisconsin and, although he did not graduate, he obtained the honorary degree of master of arts.

After leaving the state university he attended the law office of Carpenter & Smith, Milwaukee; studying also with Markham & Smith, the senior member of which firm took a lively interest in the young, poor and promising student. When he left the latter office, after he was admitted to the bar, Mr. Markham generously advanced him \$100 with which to open an office. But this was by no means the extent of Mr. McElroy's equipment. He had energy and brains in abundance, and these, combined with even a meager money capital, will carry a man to success.

Mr. McElroy has practiced now in Milwaukee for about fifteen years, a portion of the time alone and the balance of this period as senior member of the firm of McElroy & Trottman and McElroy & Eschweiler.

As a republican Mr. McElroy has well served his constituents. For four years, from 1887 to 1891, he was secretary of the state league of republican clubs, and one year was a member of the national executive committee. He was also a delegate to the convention which nominated Jeremiah M. Rusk for governor for his third term, and has since acted in a similar capacity at several state conventions. As an executive his force was well illustrated when he served as secretary of the Wisconsin bar committee which conducted the campaign of Judge Webb for a position on the state supreme bench. Elected to the assembly in 1886, to represent the fourth district of Milwaukee, this executive quality in a marked degree was also evidenced during the first year of his term as chairman of the committee on state affairs, and during his entire second term, commencing in 1888, as chairman of the committee on



judiciary. There are perhaps no more important standing committees of the assembly than these, and it is therefore an unusual honor that a young and untried member should be appointed to head them both.

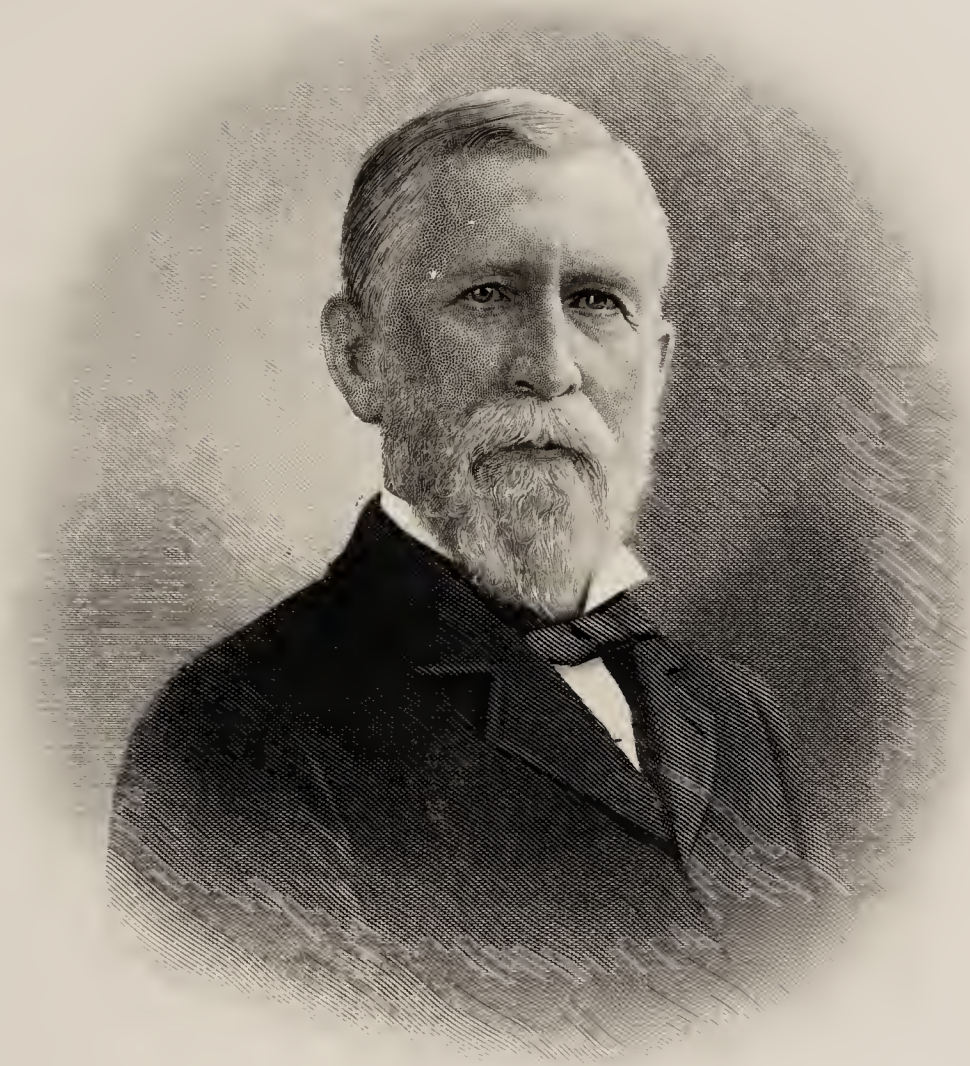
In 1885 Mr. McElroy was appointed to the office of court commissioner by the circuit judge of Milwaukee county, and has continued to hold the position ever since, being considered a model official—court-eous yet firm, judicial yet not severe.

Mr. McElroy has not been extensively identified with secret and benevolent societies; he has, however, for many years been active, and consequently prominent, in masonic affairs. In 1888 he became a member of Kilbourne lodge and has since filled in succession all the official chairs in that body; he is also a member of Ivanhoe commandery, and Wisconsin consistory, the latter the highest masonic body in the state.

He was married December 4, 1890, to Lillian Elliott, at Milwaukee, two children having been born to them—Catherine and Helen. Following in the footsteps of his parents, Mr. McElroy is a Methodist in belief, although since marriage he has been an attendant at the Presbyterian church.

#### CURTIS THADDEUS BENEDICT.

Curtis Thaddeus Benedict was born at Deposit, in Delaware county, N. Y., November 19, 1837. His father was Rev. Emilius L. Benedict, a Baptist clergyman, born at Deposit in 1815, who married LaMora T. Shaw, of Gilbertsville, N. Y., whose father, Samuel Shaw, was born at Boston, Mass., and whose mother was Marcia Dayton, born at or near Norwalk, Conn. The Benedicts are descended from William Benedict who in or about 1500 lived in Nottinghamshire, England, and more recently from Thomas Benedict, who in 1638 came from Nottinghamshire to Massachusetts Bay and soon after settled at Southold, Long Island, from which he subsequently removed to Norwalk, Conn. Many of his descendants are still living at Norwalk and in its vicinity. The grandfather of the subject of this sketch, Thaddeus Benedict, in 1791, when a young man, left Connecticut and "went west" to settle in the



C. T. Benedict





then new and timbered country of Delaware county, N. Y., where, in 1807, he married Mary Hulse, the first white child born in the town of Tompkins in that county, who on the maternal side is said to be a descendant of Gen. Nicholas Herkimer, by his only daughter, whom he disinherited for marrying a tory, the secretary of a governor of New York.

A brother of Thaddeus Benedict enlisted in the revolutionary army and died while in camp in New Jersey. Jonas Dayton, the grandfather of Marcia Dayton, was a lieutenant in the Connecticut volunteers in 1756, and Mr. Benedict has in his possession the commission given to Lieut. Dayton by Thomas Fitch, captain general and commander-in-chief of the colony of Connecticut, dated March 26, 1756, authorizing him, "by beat of drum or otherwise," to assist in raising "a company of able-bodied effective volunteers for the defense and protection of his majesties territories at Crown Point, etc." The Daytons were of French extraction, the Shaws of Scotch and Irish, the Hulses of Dutch, and the Benedicts of English.

Curtis T. Benedict was educated in the public schools of New York and in academies at Hamilton and Norwich, N. Y. In October, 1856, he came to Janesville, Wis., and was a clerk in the offices of the register of deeds and of the clerk of the court; taught schools the two following winters, and was book-keeper and financial clerk in the office of the Janesville Standard in the summer and fall of 1857. In 1858 he read law at Windsor, N. Y., in the office of Franklin Wheeler, and in 1859 at Norwich, N. Y., in the office of Sherwood S. Merritt, and was admitted to the bar of all the courts of New York on November 17, 1859. In June, 1860, at Janesville, Wis., he was admitted to practice in the circuit court of Wisconsin, and thereafter went to Iowa and commenced practice in Mitchell county, but remained there only until the spring of 1861, when he returned to New York, and afterward entered into partnership with Hon. John E. Seeley, of Ovid, N. Y. In 1863 he ran for county attorney on the republican ticket, but was defeated with all others on the same ticket. In May, 1864, he joined the army at Fortress Monroe, in the capacity of corresponding clerk under Gen. Herman

Biggs, quartermaster, who was then on the staff of Gen. B. F. Butler, at that time in the command of the department of Virginia and North Carolina. In the fall of 1864 he went with Gen. Biggs to Washington, D. C., and subsequently to Philadelphia, where, in connection with the large purchasing depot of the quartermaster's department in that city, it became a part of his duties to prepare contracts and bonds and supervise the letting of contracts for the purchase by the government of army supplies amounting to millions of dollars. After the close of the war some time was spent in settling the accounts of Gen. Biggs, who had resigned, with the government, and in August, 1867, he again came west, settling at Rochester, Minn., where he entered into partnership with Oscar O. Baldwin, in the practice of the law. The next year he was elected clerk of the court, and served for one term of four years. Thereafter he entered into partnership with Charles M. Start (now chief justice of the supreme court of Minnesota), with whom he remained about two years, when, because of failing health, he withdrew from the firm, and soon after took out-of-door employment with the C. & N. W. R. R. Co., obtaining title to considerable of the right of way, etc., of that railroad in Minnesota and Dakota. While residing in Minnesota he was active in the republican party, making campaign speeches, attending county and state conventions and serving on the state central committee. In 1872 he was a delegate to, and a vice president of, the republican national convention that met at Philadelphia and renominated General Grant for President.

In 1880 he removed to Milwaukee and soon after entered into partnership with Col. George B. Goodwin, under the firm name of Goodwin & Benedict, which connection was continued until 1883. Since 1883 he has given his attention exclusively to patent law. In 1891 he formed a partnership with Arthur L. Morsell, formerly of Washington, D. C., under the firm name of Benedict & Morsell. Mr. Benedict and his firm have had charge of many important suits in the federal courts, involving interests in or under patents, both in Wisconsin and adjoining states and in the east. His practice in the patent office and in the federal courts calls him frequently to Washington, New York, Boston and

other eastern cities, as well as to St. Paul, Minneapolis, St. Louis and Chicago.

Mr. Benedict has an enviable reputation in patent law, both as a counselor and as an advocate. His ability to analyze and group complicated questions involved in patent litigation and to clearly and forcibly present to the court the facts and the law relating to a case, is conceded. He is a member of the state bar association of Wisconsin. By close application to business for many years and with thrift and the absence of expensive habits he has acquired a competence. On December 21, 1870, at Geneva, N. Y., he married Janet McCrea Doig, youngest daughter of the late Peter Doig of Ovid, N. Y., whose ancestors came from near Sterling, Scotland. There are no children living of the marriage.

Mr. Benedict is not a member of any secret society. Being naturally cautious and not inclined to assume positions or accept responsibility without good reasons for so doing, he has never sought admission to any order, society or fraternity, whose principles, practices and objects were not clearly and fully disclosed before admission thereto. He sees no satisfactory reason for secret combinations of persons in a country where life, liberty and the pursuit of happiness are in the hands of the people, who for these important purposes in life should be free, confiding and honest with each other, a grand fraternity without cabal or secret obligation or aim. For social, educational, business, charitable and religious purposes there is, in his opinion, no occasion for secret association. For doing good every place is an altar and all time is summer; a dark room and a password are not necessary for little or big deeds of kindness.

Being of Baptist ancestry, and being early taught in that church to accept the Bible as the only controlling rule of religious faith, he early studied its teachings, and came to accept the common belief of Baptists that man, originally created holy, fell, and that all men by inheritance were fallen and had need of a saving means, once given in the earthborn Son of God, who suffered and died that all men, that chose, might by repentance and faith in Him have eternal life. Subsequent



and more careful study of the Bible, in connection with earlier and contemporary human records, and the knowledge acquired by recently recognized evidences of evolution in creation, have induced him to yield credence to the now widely accepted beliefs that the collected writings called biblia, or the Bible, are the productions of men, based on then current human knowledge, and are to be accepted as a guide and instructor, so far as approved by conscience and carefully formed opinions; and that religion involves faithful and persistent effort to ascertain and do what is right, especially in and by such a just and kindly regard for others as to lead us to do unto others as we would wish or could expect them to do to us, and in and by our own personal advancement, by all means at our command, in those essentially mental or spiritual conditions that are necessary to that higher life, to which we are stimulated by aspirations that emphasize the belief that we are indeed children and participants of the life of an all wise and infinitely good Creator.

#### GEORGE HENRY WAHL.

George H. Wahl, junior member of the firm of Miller, Noyes, Miller & Wahl, one of the strongest law partnerships in the United States, is a native of Milwaukee, where he was born on the 6th of November, 1861. His father, Jacob Wahl, was one of the pioneer teachers of the city, being principal of the sixth district school for more than thirty years. When the revolution in Germany was begun in 1848 he was a university student, at Giesen, and with thousands of other young men had to leave the fatherland. Arriving in New York city, July 4, 1849, after a residence of nine years in the Empire state, he decided to remove to Milwaukee, whither so many of his countrymen had preceded him.

Locating in Milwaukee, in 1858, Jacob Wahl, who had already mastered the English tongue, at once found a demand for his talents as a teacher and a disciplinarian. He taught for five years and then, in 1863, received the appointment of principal of the sixth district school, his jurisdiction covering no small portion of the German population of Milwaukee. That he was especially adapted for such a post is evident from the fact that he retained it until the time of his death, in 1894.

It is not strange, considering what a practical part he took in the management of the public school system of his native city, that he should have been, through life, an earnest advocate of its effectiveness in the formation of a steadfast and forceful national character.

Mr. Wahl's wife and the mother of George H., was Miss Barbara von Roeckel, of a Bavarian family whose members emigrated to the United States in 1842 because of industrial and political conditions which were unbearable in their native land.

As stated, George H. Wahl, the son, was born in Milwaukee. Here he received an education in the public and normal schools and entered the University of Wisconsin in 1883. Previous to this, however, he had taught school for three years and before graduating from the law school, in 1885, had studied in the law office of J. M. Olin, at Madison. Returning to Milwaukee, he entered into partnership with Emil Wallber, afterwards judge of the municipal court, which continued until his elevation to the bench in December, 1889.

After practicing alone for one year Mr. Wahl was appointed assistant district attorney of Milwaukee county, holding that position during 1891-'92. For a short time he was a member of the firm of Walker, Brown & Wahl, and in March, 1894, was admitted to partnership with Miller, Noyes & Miller.

Mr. Wahl is popular as well as able, having been identified with the Milwaukee and Calumet clubs. He is a mason, a member of Kilbourn Lodge No. 3, and is connected with the Milwaukee musical society. He was married in 1891 to Natalie Rice.

#### BRADLEY G. SCHLEY.

Mr. Schley, whose sudden death on the 18th of June, 1895, cast a cloud of gloom over the Milwaukee bar and a host of friends, was born in Milwaukee, October 3, 1857; his education was obtained at the Wisconsin university. His whole professional life was passed in his native city. He had served as assistant United States district attorney and also as assistant general solicitor of the Milwaukee, Lake Shore & Western Railroad company; was a member of the American bar association and

the western member of its executive committee; was appointed by Governor Peck a member of the committee to promote and effect uniformity of legislation. It has been said of him that he was "sensitive to a fault, the soul of honor, the epitome of personal pride and self-reliance; he was a law unto himself and erred, as few men do, in self-blame, magnifying to himself the faults that others readily forgave him. A pleasant, forcible and logical speaker, his forensic efforts were both agreeable and convincing. A close student, he always knew whereof he spoke, and invariably won that attention and appreciation which are the highest compliments to one of his profession; of a genial and lovable nature, his friends were legion, and his was the rare gift of attracting and retaining by his personality the warm friendship of mature and ripened men. By nature, birth and education he was a gentleman, and his mental capacity and attainments warranted his pride and ambition. The legal mind was a direct heritage, for his was a family of lawyers, his father, grandfather and great-grandfather having been active and prominent members of the Maryland bar."

#### E. P. SMITH.

Edwards P. Smith was admitted to practice in the circuit court of Wisconsin at Milwaukee, May, 1849, being then a student in the offices of Finch & Lynde of that city. Prior to that time he was a student in the offices of Hon. E. F. Bullard, now of New York, and of Kirtland & Seymour, of Waterford, Saratoga county, New York.

In October, 1849, Mr. Smith commenced the practice of his profession at Beaver Dam, Dodge county, this state, remaining there in a full and extensive practice until January, 1872, when he removed to Milwaukee, forming a partnership with Ephraim Mariner and David S. Ordway, the latter named gentleman having been associated with him in business at Beaver Dam until 1866, when he removed to Milwaukee.

Thereafter Mr. Smith was a member of and connected with the following legal firms of that city: Cotzhausen, Smith, Sylvester & Scheiber; Markham & Markham; Nathan Pereles & Sons; Finches, Lynde & Miller.







*A. H. Smith.*



From the time of his admission to practice before the supreme court of the state, until 1891, Mr. Smith was frequently engaged in important litigation in that court—the last case argued by him being that of Burnham vs. Burnham, in 1891.

In January, 1890, Mr. Smith removed to Omaha, Nebraska, accepting the position of assistant general attorney for the Union Pacific railway, and is still residing at Omaha and in the employment of the railroad company.

Mr. Smith has always been a close student and hard worker, seldom finding time for recreation or even a brief respite from professional toil.

By close application and unfaltering zeal in behalf of his clients he early won a place in the front rank of the profession and has always maintained it.

While a resident of Beaver Dam he was engaged in nearly all the important litigation of that vicinity and it was here the foundation was laid for success in more important fields. He is equally at home in the trial of jury cases and in the argument of difficult questions of law before the supreme court. Indeed there are few lawyers able to sum up a case to a jury in a more able, entertaining and effective manner, or to argue questions of law to a court more persuasively. He is entitled to be classed not only as a capable, learned and well equipped lawyer, but as a genial gentleman, a good citizen and worthy member of society.

#### AMOS A. L. SMITH.

Mr. A. A. L. Smith was born at Appleton, Wisconsin, September 8, 1849, the son of Reverend Reeder and Eliza P. (Kimball) Smith, and was the first white child born in that place. His father was one of the most conspicuous citizens of Wisconsin, and to him belongs the credit of having been the founder of the city of Appleton, as the agent of Amos A. Lawrence, of Boston, who was the owner of the land upon which the city now stands. He also established the Lawrence university, at Appleton, and founded the town of New London, Wisconsin, which he named after his birthplace in Connecticut.

The subject of this sketch was prepared for college at Lawrence



university, at Appleton, where he completed his sophomore year. He then entered the Northwestern university, at Evanston, Illinois, in September, 1869. After a full classical course, he was graduated in 1872, taking the highest prizes for oratory and English composition. He was a prominent debater in the literary societies of the institution; was for two years editor of the college paper; took several special studies in the department of engineering, and in languages was quite proficient, having in his college course read the whole trilogy of Æschylus, in addition to the Greek prescribed. He also prepared an oration in Greek.

Immediately after graduation Mr. Smith became traveling correspondent for the Chicago Inter Ocean, and a few months later joined the editorial force of the city department for two years. In the meantime, having access to the extensive law library of J. Y. Scammon, proprietor of the paper, his spare moments were devoted to the study of the law.

In 1874 he came to Milwaukee, where he completed his law studies and was admitted to the bar the same year, and commenced the practice of his profession in the office of Carpenter & Murphey. Here, for two years, Mr. Smith assisted in the preparation of cases and participated in many of the trials of the firm.

Upon the return of Senator Carpenter from Washington, in March, 1876, Mr. Smith rented the office and library of Chief Justice E. G. Ryan, and began the practice of law on his own account, acquiring a large and representative clientage. Subsequently he entered into partnership with Senator Carpenter and Winfield Smith, which was known as Carpenter & Smiths, and upon the death of the former, in 1881, the firm became Winfield & A. A. L. Smith. January 22, 1883, Mr. Smith became associated with James G. Jenkins, afterward United States circuit judge, and General F. C. Winkler, forming the firm of Jenkins, Winkler & Smith. Later Mr. J. T. Fish was associated with them, and upon the subsequent retirement of Mr. Fish to become solicitor of the Chicago, Milwaukee & St. Paul railroad, E. P. Vilas, of Madison, Wisconsin, entered the firm. When Judge Jenkins went upon the bench,

July 16, 1888, the present firm of Winkler, Flanders, Smith, Bottum & Vilas was formed by combining the firms of Winkler, Smith & Vilas, and Flanders & Bottum.

In 1892 Mr. Smith was one of the promoters and organizers of the Wisconsin National bank, an enterprise which at once took a prominent position among the financial institutions of the northwest. He has always taken an active part in the bank's affairs and is a member of its board of directors.

Mr. Smith is a lawyer of unquestioned ability and takes a most prominent position at the bar of the state. As counsel for estates and for business men in the guidance and conduct of their affairs, he is recognized as one of the most acute and safe counselors at the bar, combining sound legal attainments with excellent business judgment. He is the confidential legal adviser and counselor for two of the largest corporations in the city.

A large portion of Mr. Smith's success is attributable to unremitting attention to his profession, and hard, steady work. He occupies a high position at the bar of the state and, although in the prime of life, can, with justifiable pride, look backward over well-spent years.

He was formerly one of the trustees of Milwaukee college and maintains a lively interest in educational advancement. He is a lover of fine arts and is a connoisseur in that line, having a remarkably fine private collection of standard art subjects and of literature bearing upon art work.

Mr. Smith was married to Miss Frances Louise Brown, of Evanston, Illinois, May 20, 1874; the result of this union has been three sons and one daughter.

#### WILLIAM HARVEY AUSTIN.

William H. Austin was born in Binghamton, New York, on October 22, 1859. His parents were Patrick and Mary (Collins) Harvey. His mother dying at his birth he was adopted when about five weeks old by Allen and Sarah (Meigs) Austin. His father by adoption was

himself a member of the legal profession, but retired from practice about the time of the birth of the subject of this sketch.

The family removed to Wisconsin in 1868 and settled at Portage city during the succeeding year. In 1871 another change of location was made to Milwaukee, where the father died in 1876 and the mother in 1879. Before coming west the former had lost all his property in unfortunate speculations, and as he was not able subsequently to regain his former financial standing, upon his death the adopted son was thrown entirely upon his own resources.

But ere now the youth had obtained a valuable business experience, as well as a good primary education. He had served in a clerical capacity for J. B. Shaw, the salt merchant, and J. B. Durand, the wholesale grocer. Subsequently he secured a position as assistant librarian with the young men's association, afterward merged into the public library. While thus employed he also commenced to read law with Joshua Stark, and in November, 1879, he was admitted to the practice of his profession.

In 1880 Mr. Austin was appointed assistant district attorney under W. C. Williams and two years thereafter became the junior member of the firm of Brazee & Austin. This partnership continued for nearly two years, when he formed a professional connection with the brilliant lawyer, George B. Goodwin. The firm of Goodwin & Austin continued until the fall of 1884, when the senior member of the firm died and the junior was received into the partnership of Austin & Runkel, making the third member of Austin, Runkel & Austin, the senior member of this firm being Judge R. N. Austin. While thus engaged in active and successful practice, in the spring of 1889 he was appointed a member of the school board. During the following year he became assistant city attorney, his partner, R. N. Austin, being at the head of the department, and when the latter was elected judge of the superior court in 1891 Mr. Austin himself was promoted to the vacancy thus created. His next partnership was with C. H. Hamilton, and his next assumption of public office, in 1892, when he was elected to the legislature from the sixteenth ward. An added compliment to his ability



was bestowed upon him, when he was placed in nomination for the speakership by the republican minority. Upon Mr. Hamilton's election as city attorney in 1894, the firm of Austin & Hamilton was dissolved. During this year the partnership of Austin & Fehr was formed. That year Mr. Austin was elected senator from the fifth Wisconsin district. He was also unanimously nominated by the republicans for judge of the circuit court, in opposition to D. H. Johnson, but refused to allow his name to be used in a movement which would bring judicial elections into politics.

As a practitioner, Mr. Austin has been recognized as keen, incisive, aggressive and yet even tempered and judicial. In the earlier stages of his practice his ability as a criminal lawyer attracted general attention, one of the most noteworthy cases with which he has been connected was the murder trial of the State vs. McLeod. Of late years, however, Mr. Austin has withdrawn virtually from criminal practice, devoting himself chiefly to civil cases, corporation law and damage suits. As an attorney, either for the county or the city, he has safeguarded the interests of the public with ability, and has fully gained the confidence of the people. On constitutional questions his views are broad and correct. For instance, when North Milwaukee applied for incorporation as a village he opposed the application in the circuit court and his contention that the village incorporation law which had been in force since 1859 was unconstitutional was sustained by the supreme court. His view regarding the constitutionality of the law of 1887, providing for the imprisonment of habitual drunkards, was also sustained by the court of last report.

As a legislator Mr. Austin has fathered many measures for the benefit of Milwaukee. Among the legislative measures placed to his credit may be mentioned the bills relating to the civil service in the city and county of Milwaukee, creating the park system of Milwaukee and allowing the school board a voice in the selection of sites and plans—all of which measures were introduced and supported by him.

Although it is self-evident from the facts above stated that Mr. Austin is an indefatigable and systematic worker, he has the rare faculty

of throwing off business cares with the close of business hours and devoting himself to social pleasures and recreation. He reads much, is possessed of a most retentive memory and rare literary discrimination, and, withal, is domestic in his tastes and his habits. Before marriage his wife was Miss Jeannette Ferguson McLean, of Faribault, Minnesota, to whom he was united at Fox Lake, Wis., in 1882. Their children are William McLean, Robert Harvey, Jeannette Grace and Allen S.

#### ELIAS H. BOTTUM.

Elias H. Bottum was born in New Haven, Addison county, Vermont, February 28, 1850, and grew to manhood in a quiet farming community in the heart of the picturesque Champlain valley.

The Bottum\* family history in America dates back to 1670, when two brothers emigrated from England and settled at Saybrook, Connecticut. For a century or more thereafter the descendants of these two colonists settled mainly in Connecticut and Massachusetts, but among the first settlers of Vermont was Simon Bottum,† the great-grandfather of Elias H. Bottum, who removed from Lanesborough, Massachusetts, to the Green Mountain state, settling at Shaftsbury, in Bennington county. One of the grandsons‡ of the Vermont pioneer was Elias S. Bottum,\*\* who married Mary M. Hoyt, a highly educated and accomplished woman, daughter of Rev. Otto S. Hoyt, a well-

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\*Two brothers Winterbottum settled at the mouth of the Connecticut river about 1670. They disagreed and by act of general court had their names changed; one taking the name of Winter—the other that of Bottum.

†Simon Bottum came up from Massachusetts and settled at Shaftsbury before the revolutionary war. He owned a large tract of land. He participated in the war of the revolution; was captain of a volunteer company and fought in the battle of Bennington.

‡The father of Elias S. Bottum, also named Elias, removed at an early age from Shaftsbury, Vermont, to New Haven, Addison county, in the same state, to take possession of and to reside upon a large tract of land which his father had purchased for him. He was an active, prosperous and influential farmer. Was honored politically; was a member of the Vermont senate and was county judge. He married Diadama Squires.

\*\*Elias S. Bottum succeeded to his father's farm. Although he was an invalid during most of his life, he was a man of influence in the community. He died at the age of fifty-six years.



Chas. A. Botthorn





known clergyman of the Congregational church. A prosperous farmer of the intelligent New England type, Elias S. Bottum was the owner of a large tract of land in Addison county, which had been in possession of the family since 1750. Elias H. Bottum, his son, was born and brought up on this farm, leaving the old homestead for the first time when sent away to fit himself for college. In early childhood he was not strong physically, and not only was unable to attend school much of the time, but found the solitary reading and study to which he was strongly inclined, discouraged by his elders. Notwithstanding the fact that he labored under some disadvantages, he made fair progress in his studies, and the improved condition of his health after he was fifteen years of age enabled him to apply himself so closely that he soon made up for the time lost in his early boyhood. He was fitted for college in Kimball union academy at Meriden, New Hampshire, and then entered Middlebury college at Middlebury, Vermont, from which institution he was graduated at the age of twenty-one years in the class of 1871. Immediately after his graduation he went to New York city and began reading law in the office of Evarts, Southmayd & Choate, the firm being then, as now, probably the most notable in the United States for the high character and distinguished ability of the lawyers composing it. The duties of the position which he had obtained in this office proved to be too exacting to allow him to devote as much time as he desired to study, and after a short time he went to Washington, D. C., where he obtained a clerkship in the government bureau of education, and while thus employed he continued his law studies in the law school of Columbian college, and was graduated therefrom in 1873.

Immediately after his admission to the bar Mr. Bottum decided to locate in Milwaukee—a decision he had reached after deliberate observation and examination of statistics regarding the resources of the state.

In November, 1873, he was joined by a former classmate, Walter E. Howard,§ and entered upon the practice of his profession as the head of the firm of Bottum & Howard.††

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§Now professor of political economy at Middlebury (Vt.) college.

††This partnership was dissolved in 1874, when Mr. Howard returned to Vermont.

By earnest and steady application to the requirements of his profession, he soon obtained recognition from the members of the bar and the public, as being a conscientious, capable young lawyer, who displayed more than ordinary ability. In 1878 he entered into copartnership with James G. Flanders, and the professional association thus formed has continued to the present time—a period of twenty years. In 1888 the business of Flanders & Bottum and Winkler, Smith & Vilas was consolidated, and the firm of Winkler, Flanders, Smith, Bottum & Vilas was organized.

In the earlier years of his professional life Mr. Bottum engaged in general practice, but in later years much of his time has been given to patent cases. To this branch of the practice he has given most careful consideration, and he has taken the highest rank among the able patent lawyers of the west. That Mr. Bottum is an authority upon the law of patents proves that he has diligently devoted himself to study, not only of the law but also to philosophy and engineering, for to attain success as a patent lawyer it is necessary not only to have a thorough knowledge of law but also to be a master of mechanics, of philosophy, chemistry and of civil engineering. Constant study and application are required; each case introduces some mechanical, electrical or chemical principle that must be studied and comprehended, and the degree of success which a member of the bar attains in this branch of practice is nearly always commensurate with the degree of knowledge of philosophy and mechanics possessed by him.

Mr. Bottum was married on the 17th of October, 1876, at Schuyler Falls, N. Y., to Caroline M. Bailey, daughter of Rev. Augustus F. Bailey. They have one daughter, Mrs. Morris F. Benton of New Brighton, N. Y.

Mr. Bottum has always been a republican, but has taken no active interest in politics, nor held political position. He is a member of the masonic fraternity, and has taken the various degrees in the blue lodge, chapter and commandery.



## WILLIAM G. WHIPPLE.

For nine years preceding 1868 Mr. Whipple was a member of the Milwaukee bar. He was born in Warehouse Point, Connecticut; graduated from Wesleyan academy, Wilbraham, Massachusetts, Wesleyan university, Middletown, Connecticut, and the law school at Albany, New York. During part of the time he resided in Milwaukee he was a member of the firm of Carter & Whipple, and at one time was in partnership with S. Park Coon. Mr. Whipple was once the republican candidate for district attorney of Milwaukee county. In 1868 he removed to Little Rock, Arkansas, where he continues to reside and practice law. Since he has been there he has served as United States district attorney and mayor of Little Rock, and been the republican candidate for governor.

## JOHN H. ROEMER.

Jacob Roemer, his father, was a merchant and a native of Germany, as was Herman, his grandfather. His mother, Elizabeth Leinberger, and her father, John, were also natives of Germany, parents and grandparents, both paternal and maternal, forming a portion of that great emigration which resulted from the revolution of 1848.

The Roemers first settled in Pennsylvania and the Leinbergers in Virginia, but subsequently met in Ohio, where Jacob Roemer and Elizabeth Leinberger became man and wife. On the 26th of April, 1866, was born their son, John H. Roemer; the place of his birth, Clarington, Monroe county. He enjoyed a thorough mental training, passing with honors through Marietta college and Yale university. While teaching he diligently prosecuted his legal studies under the direction of John H. Holt, a prominent attorney at Wheeling, West Virginia, and was admitted to the practice of his profession in 1891. He subsequently returned to Yale and completed the law course in 1892.

Soon after graduating from the Yale law school Mr. Roemer de-

cided to locate in Milwaukee and remained for four years associated with the firm of Van Dyke & Van Dyke.

Mr. Roemer's abilities as an educator have been recognized by several high grade institutions. He is one of the corps of special lecturers of the Illinois college of law at Chicago, before which he delivers twelve lectures annually upon the theme of negligence law. Before his admission to the bar, and while pursuing his legal studies, he was principal of the Linsly institute at Wheeling, West Virginia, a military and classical academy, and the oldest institution of the kind in the Ohio valley. His services at this institution were of high character and note, and are given prominence in the work entitled "History of the Ohio Valley." Mr. Roemer resigned his position as principal of the Linsly institute in 1889 to enter the law school at Yale, but was induced by Governor Fleming and the board of regents of the state normal school at Fairmont, W. Va., to become the head of that institution for one year. He declined to remain longer out of the ranks of his chosen profession, and at the end of the year he left the state normal school for Yale.

Mr. Roemer has the good fortune to have married a lady who is in close and intelligent sympathy with his professional life. Caroline H. Pier, who became his wife November 17th, 1897, is herself a practicing member of the Wisconsin bar.

#### WILLIAM EDWARD CARTER.

William E. Carter, of the firm of Van Dyke & Van Dyke & Carter, was born near Brighton, county of Sussex, England, on the 17th of November, 1833, his father, William Carter, being a farmer, market gardener and inn keeper. His mother's maiden name was Ann Fox, both of his parents having died near Lancaster, Grant county, Wisconsin, to which locality most of his relations emigrated in 1850. Being the eldest of the family, William E. was kept very busy assisting his father in his agricultural pursuits, in the market garden, and in the care of the roadside inn, as hostler, being required to take care of the horses of travelers as well as those owned by his father.

The last named occupation fell to him in his eleventh year, although

he continued to assist upon the farm and in the market garden. From his ninth to his eleventh years, however, his father kept an inn at Henfield in the same county. The inn was located at Pyecomb, county of Sussex, and here it was that the boy attended a public school for a short time. With what thoroughness he was instructed may be inferred from the fact that its one teacher had charge of more than one hundred pupils. Another short season of training in a boarding school, with the irregular instruction given him by his father and one of his aunts in the common branches, virtually constitute the education which the youth had received previous to coming to Wisconsin in his seventeenth year, and all of this instruction was prior to his eleventh year.

A firm will and economy in the expenditure of time will surmount many obstacles. These elements of success the boy possessed. Consequently, although he was industrious and faithful in the discharge of the practical duties which devolved upon him while assisting his father about the farm near Lancaster, he took advantage of every spare hour to perfect himself in his studies. As he had early conceived an ambition to master the principles and practice of law, the trend of his studies was soon in this direction. At length he entered the office of Hon. J. Allen Barber, who had taken an earnest interest in the future of the young man. For a short time he also pursued his legal studies with Hon. J. T. Mills, of the same place. To the encouragement and effective tutelage of Mr. Barber, however, he gives the chief credit of that wise guidance in his early career which means so much to every member of the profession.

Mr. Carter was admitted to the bar in the fall of 1856 and practiced alone at Lancaster until January 1, 1861, when, at the invitation of Hon. Stephen O. Paine, of Platteville, he removed to that place and became an equal partner with him until his death in 1871. For some time afterward he practiced alone and then, in connection with his brother, George B., formed the firm of William E. & George B. Carter. Thomas L. Cleary was subsequently received into the firm and Mr. Carter's brother withdrew, on account of ill health. A season of independent practice followed, after which E. E. Burns became a partner in the firm



of Carter & Burns. This connection continued until June 10, 1895, when, upon the solicitation of the Van Dyke brothers (George D. and William D.), he removed to Milwaukee to associate himself with them, and formed the firm of Van Dyke & Van Dyke & Carter.

Previous to his removal to the Cream city, Mr. Carter had established a reputation as one of the most astute legislators and lawyers in Wisconsin. A republican from the organization of the party, he has served the best interests of his adopted state for many years. From 1877 to 1883 he was a member of the board of regents of the University of Wisconsin, and during a portion of this period he served in the legislature of the state. First elected in November, 1876, he was a member in 1877, 1878 and 1879, serving upon the judiciary committee in 1877, upon the joint committee on the revision of the statutes in 1878, and as chairman of the judiciary committee in 1879.

It is needless to say that during his long and honorable career Mr. Carter has been connected with many remarkable cases, but a mention of two of them will suffice to illustrate the facility with which he grasps the weak points in an opponent's position and the conclusive way in which he exposes its instability. For instance, a few years ago, he was chief counsel for plaintiff in the suit of Thompson vs. Horton, it being an action for libel brought in the United States circuit court for the western district of Wisconsin, sitting at Madison. The libel was in the form of anonymous letters, purporting to have been written by a woman to plaintiff's wife; to a banker at Fennimore, Wis.; and to the Methodist minister, making most scandalous charges against Mr. Thompson. When the trouble came about, the plaintiff had removed to Dakota, and when Mr. Carter was called to take charge of the case, he found that a detective had already been employed to obtain specimens of the handwriting of the suspected Horton. Although the so-called detective betrayed the interests of his employer and went over to the defendant, Mr. Carter boldly turned the guns of the enemy against his own ranks and completely routed him. In other words, Horton and his attorneys unconsciously furnished the evidence which fastened the guilt upon him beyond the shadow of a doubt. For the use of his

experts he had obtained and produced a number of letters, which, at various times, he had written to friends and relatives. The anonymous letters contained a number of curiously misspelled words which Mr. Carter noticed were repeated in the genuine letters introduced by the defendant. Strange to say, defendant's counsel did not notice this vital point, but while they were making their arguments to the jury the attorney for the plaintiff was carefully drawing off a list of these death-dealing words. When it was produced the effect was crushing—the plaintiff won his case then and there.

In the State of Wisconsin vs. John Groth et al., three men, father, son and grandson, were charged with entering a barn in the night-time to steal wheat, they not knowing of the presence of the farmer and his wife who chanced to be sleeping therein that night. They claimed that by the light of the moon, which shone in over the top of the quarter opened barn door, they recognized the faces and the clothes of the culprits. After fixing the position of the barn doors relative to the wheat bin, the hour of the night when the event was claimed to have occurred, the position of the sides of the barn with respect to the points of the compass, the position of the barn door, the side of the barn exposed to the rays of the moon, and the angle at which the light would be obliged to strike the barn floor, Mr. Carter drew a diagram illustrating these points and sent it to a Chicago friend who was requested to place it in the hands of an astronomer in order to ascertain how much light, under the circumstances, could have illuminated the barn floor. To the uninitiated, this may seem like taking much trouble over a very small matter; but upon this very small matter, or point, revolved the entire case. Mr. Carter took this trouble because he had noticed that shadows in the moonlight were very black and dense, and their edges very sharp, and saw the important bearing this fact had upon the case, and he therefore realized that his case was won when he received a reply from an astronomical expert, stating that upon the night in question, under the circumstances, all the light that could enter the barn was a mere pencil ray which would pass over the heads of the three men, strike the floor near where the alleged witnesses were located, between them and the cul-

prits, and leave the wheat bin and the space between the witnesses and the culprits in total darkness. Manifestly, this would make it impossible for those charged with the theft to be recognized; and these points were so clearly demonstrated by Prof. Elias Colbert, the well-known astronomer and editor of Chicago, who was called as an expert in the case, that the district attorney promptly acknowledged that he had no grounds for prosecution. It is such painstaking as this that goes far to make the successful trial lawyer.

On the 4th of December, 1856, Mr. Carter was married to Ellen Evans Rowdon, his family consisting of his wife and four children—Byron B., born in 1860, a resident of Hinsdale, a Chicago suburb; Myrtle E.; Thomas P., a law student, and Susan.

#### GEORGE C. MARKHAM.

George C. Markham was born in Wilmington, Essex county, N. Y., May 7, 1843. The Markhams came from England before the war of the revolution and settled, some in Connecticut, some in Pennsylvania and some in Virginia. His grandfather, Barzillai Markham, was born in Enfield, Conn., and fought in the revolution, serving as an ensign in the 8th Connecticut. He was afterwards colonel of militia. His father, Nathan Barzillai Markham, was born at Pittsfield, Vt., in April, 1796. When two years old his parents moved to Essex county, N. Y., where he married Susan McLeod, and to them were born six sons and four daughters, the subject of this sketch being the youngest. Nathan Barzillai Markham and his wife continued to live in New York state until 1870, when they removed to Manitowoc, Wisconsin, where their eldest son lived, and spent the balance of their days there, he dying at eighty-six and his wife surviving him less than a year. The McLeods were from Scotland; they came to this country at an early day, and were found fighting with the colonists in the days of '76.

Mr. Markham's father was engaged in the manufacture of iron at Wilmington in Essex county, N. Y., for a period of about forty-five years and, while that business afforded a comfortable support for himself and family, he did not succeed in the accumulation of property.





Geo. C. Markham





In those days charcoal was used in the manufacture of iron, and on this account the elder Markham acquired title to a good deal of land, a small portion of which could be cultivated, therefore Mr. Markham's early days were those of a farmer boy. By working on the farm and then by teaching school he managed to acquire the means to pursue a legal education and studied in the office of Hale & Smith, at Elizabethtown, New York, and was admitted to the bar in October, 1868, at Canton, St. Lawrence county, N. Y. A few months afterwards, drawn by the opportunities that have beckoned so many to the west as to the land of promise, he moved to Milwaukee in March, 1869, and has made his home there ever since. The story of Mr. Markham's life is a simple one. It is the chronicle of years devoted to the practice of his chosen profession, of energies unsparingly given to laying deep and solid foundations of careful preparation and of building on them with thoughtfulness and labor; of untiring devotion to the interests of those who have confided their business to his care and of unfaltering effort to attain honorable success. He has given his undivided attention to business, turning a deaf ear to repeated solicitations to assume public office. His clients have ever found in him a safe and reliable counselor, and, by his careful attention to business and thorough knowledge of the various duties of his profession, he has built up a most desirable clientage and secured a comfortable competence.

Soon after Mr. Markham's arrival in Milwaukee he entered into partnership with his older brother, Henry H. Markham, and so continued till 1879, when the connection was dissolved by the removal of Henry H. to California. He then became associated in practice with Mr. George H. Noyes; this partnership lasted till Mr. Noyes became judge of the superior court of Milwaukee county.

After remaining in practice by himself for several years Mr. Harold W. Nickerson was associated with him in 1894, and in 1896 Mr. John F. Harper was admitted and the firm became Markham, Nickerson & Harper, which it still remains.

As a lawyer, Mr. Markham is distinguished by qualities which are solid and enduring rather than showy and ephemeral, and by thorough-



ness of work. He brings to the trial of his cases an experience gained by years of practice and a knowledge of the law and of the particular facts of the case, reached after most earnest and careful study. The thoroughness of preparation and the complete mastery of the underlying principles exhibited in a practice covering a wide diversity of cases in courts of many different states has secured the confidence of a large number of clients. In his extensive practice in the admiralty courts of the great lakes Mr. Markham has participated in many of the notable trials and in nearly all of the important cases of the last quarter of a century.

At different times he has been largely interested in real estate and has contributed to the growth and development of Milwaukee. For many years he has been one of the largest stockholders in the Milwaukee Dry Dock company. At one time and another he has had extensive interests in vessels and steamers. In these different activities he has always shown good business sense and a wise judgment that rank him as a first-class man of affairs.

In 1895 he was elected one of the trustees of the Northwestern Mutual Life Insurance company, a company ranking second to none, and immediately placed in most important and honorable positions among the trusted counselors of this very safe, conservative and most successful institution.

In August, 1870, Mr. Markham was married to Rose S. Smith, of Elizabethtown, N. Y. She died in 1893. Three children were born to them, a daughter, Susie May, and two sons, Stuart H. and George F. The home on Grand avenue is a comfortable residence in the most desirable part of the city, and is the scene not only of domestic comfort but of a refined and delightful hospitality that has secured the lasting friendship of an extended circle of acquaintances.

#### GLENWAY MAXON.

Mr. Maxon is a native of Cedar Creek, Washington county, Wisconsin, where he was born on the 1st of December, 1851. The village is located upon his father's farm and connected with the property is a

valuable water power. Mr. Maxon, Sr., in fact, surveyed most of the land in that section of the state and, for many years, was one of the most widely known and influential men of southern Wisconsin.

Densmore W. Maxon, the father of Glenway Maxon, was born in Verona, Oneida county, New York, September 30, 1820; he studied law in his younger days but never practiced the profession. He was, in fact, of too active a disposition to confine himself to any one field. Coming to Wisconsin in 1843 he first settled in Milwaukee, and three years later located in Cedar Creek. Soon after becoming a resident of the state he was appointed deputy surveyor of Washington county, and took up land upon what afterward became the site of Cedar Creek. He called himself a farmer, but was in reality for many years a man of public affairs. In 1848 he was elected to the popular branch of the first legislature, after the formation of the state constitution, and was re-elected in 1852, 1867, 1868, 1869, 1870, 1871, 1882 and 1883. For four years, 1857-1861, he served in the state senate, making a total period of thirteen years which he gave to the service of the commonwealth—a record surpassed but once in the history of Wisconsin. He was a candidate for lieutenant governor in 1865. Among the laws of which he is the father is that which substitutes in place of commissioners of the county the present board of supervisors.

It is acknowledged that one of the great engineering and public works of the northwest is the Sturgeon Bay and Lake Michigan Ship Canal, but it was many years from the time that the enterprise was conceived before it was completed, the company being long embarrassed for lack of funds. It secured a land grant for the encouragement of the work, but the sales so languished that by 1879 the canal company was on the verge of bankruptcy and was considering the propriety of abandoning the project. During that year Mr. Maxon was placed in charge of the land grant and pushed the sales with such energy and ability that a large fund was realized, the canal being completed in 1884. For fifteen years he was also president of the Wisconsin Railway Farm Mortgage Land company, remaining at its head until its affairs were

wound up by the legislature. He further served as president of the board of trustees of the northern hospital of Wisconsin.

Glenway Maxon's mother was, before marriage, Miss Elizabeth Truck, and is a woman of rare force and vivacity. She is of both French and Dutch ancestry, undoubtedly a fact which is a partial explanation of her character. The boy lived at the old homestead, attending first the public schools of Cedar Creek and then those of Milwaukee. Afterward he graduated both from the general department of the University of Wisconsin (1873) and the law school of the same institution (1874).

Mr. Maxon began the practice of his profession in Milwaukee during 1876 and has devoted much of his time to railroad litigation. One of the noteworthy cases in which he has been retained is that of the Madison & Portage Ry. Co. vs. the North Wisconsin Ry. Co. The contest was over certain grants covering about 1,000,000 acres of land, which passed from the general government to the state in 1856 and which was subsequently donated by the commonwealth for the encouragement of railroad construction. The case was finally taken to the United States supreme court and settled by compromise.

As a democrat Mr. Maxon has been an acknowledged force in his party, believing that political principles should chiefly guide questions of national concern and that party lines should not be tightly drawn in municipal affairs. Although defeated for the mayoralty on this platform in 1896 he made a remarkable run, reducing the usual republican majority about two-thirds. He is a member of the executive committee of the municipal league, which has done so much to elevate the standard of local politics. He is also upon the board of associated charities of Milwaukee and a director of the Wisconsin training school for nurses.

Mr. Maxon was married on the 8th of February, 1888, at New Orleans, to Annbelle V. Horner, daughter of Joseph P. Horner, a prominent lawyer of the Crescent city. Mr. Horner was a native of the state of New York, being born March 18, 1837, and moving to the south in the early '80s. Mr. and Mrs. Maxon have two living children







*N. N. Lincoln*

—Harriet and Glenway Maxon, Jr.; another son, Joseph Horner, died December 26, 1895, when five years of age.

### WILLIAM H. TIMLIN.

William Henry Timlin was born May 28, 1852, in Mequon, Ozaukee county, Wisconsin. His father, Edward Timlin, was a native of Ireland, a farmer, and at one time held the office of county treasurer of Washington (then including Ozaukee) county.

W. H. Timlin had a common school education, was school teacher, county superintendent of schools in Kewaunee county, studied law with G. G. Sedgwick, and later with the firm of H. G. and W. J. Turner; was admitted to the bar in 1878; married in 1880 at Kewaunee, Wisconsin, to Celia L. Arpin. He practiced law first at Kewaunee, a short time at Green Bay, and in 1886 moved to Milwaukee, where he has since been engaged in the practice of law.

### FRANK M. HOYT.

Mr. Hoyt is a native of Milwaukee; date of birth, August 25, 1853. His father, Charles M. Hoyt, was one of the early and prominent merchants of the Cream city who have enabled the metropolis to assume that air of substantial elegance which has given the city a national reputation. He was, however, educated as a lawyer and admitted to the bar of Milwaukee county, and, although he never practiced, his legal training was of undoubted assistance to him in the conduct of his large business interests.

The mother, Catherine E. Robinson, was of English descent, the family emigrating from Connecticut at an early day, being known in the vicinity of Rochester, N. Y., in 1730.

Frank M. Hoyt attended the public schools of Milwaukee, also the Christina cadet school, Markham's academy, Beloit college (two years), and the law department of the Michigan state university, at Ann Arbor. After studying law in the office of Mariner, Smith & Ordway, Milwaukee, he was admitted to the bar on the 9th of July, 1877;



to practice before the state supreme court, September 13, 1878, and before the United States supreme court, September 23, 1878.

Mr. Hoyt is most versatile as a practitioner, his duties taking him into all courts, high and low, where he is equally successful. He is an active Mason and an influential democrat, having served for several terms as chairman of the democratic county committee.

On the 10th of November, 1880, Mr. Hoyt was married to Miss Hattie P. Jones, his wife being a representative of an old and influential New England family. They have lost two children and two are living—Annette and Constance.

#### CHARLES FREDERICK HUNTER.

Charles F. Hunter, member of the firm of Nath. Pereles & Sons, was born in Milwaukee in 1862, where his father, Edward M. Hunter, was known for so many years as United States court commissioner and a whole-souled, refined gentleman. The latter was born in Bloomingburg, Sullivan county, N. Y., February 19, 1826, his parents, David and Elizabeth (Smith) Hunter, being natives of the Empire state. The Hunters originally came from the north of Ireland and the Smiths, Mrs. Hunter's ancestors, were of pure Scotch blood, both families settling in America during the seventeenth century.

Edward M. Hunter was educated in the public schools and the academy at Montgomery, Orange county, being admitted to the bar in New York city when twenty-one years of age. Two years later he removed to Milwaukee and formed a partnership with S. Park Coon, afterward attorney general of the state, and Charles James, subsequently collector of the port of San Francisco. He served as private secretary during Governor Barstow's short term of office and was also a member of the state senate in 1853, when the famous impeachment trial of Judge Levi Hubbell, of the Milwaukee circuit court, was brought before the legislature for its consideration. As previously stated, Mr. Hunter spent most of his long professional life in Milwaukee in the discharge of his duties as United States court commissioner, holding that office at the time of his death, on the 13th of September, 1878.





Henry J. Killilea



The son, Charles F. Hunter, spent his boyhood in Milwaukee attending the city schools, the high school and Markham's academy, one of the best known educational establishments in Wisconsin. At an early day he decided to adopt the legal profession, entering the office of Flanders & Bottum as a student and remaining with the firm for three years—from 1878 to 1881. He became deputy clerk of the circuit court in 1882, assiduously continuing his legal studies while performing his clerical duties. Mr. Hunter was admitted to the bar in 1884, but held his official position for two years thereafter. In 1886 he became a clerk in the office of Nath. Pereles & Sons. Here he remained until January 1, 1889, and then formed a professional connection with Lewis M. Ogden under the firm style of Ogden & Hunter. This latter was changed to Ogden, Hunter & Bottum, by the admission of E. H. Bottum, and so continued until May 1, 1894. At that time Mr. Hunter became associated with J. M. Pereles and T. J. Pereles, continuing the firm name of Nath. Pereles & Sons, being now, as stated, a member of that old and stanch firm. Its practice is virtually confined to real estate law and equity, and within this province there is no firm in Milwaukee which has a higher legal standing. In this connection it should perhaps be stated that since 1896 Guy Despard Goff has also been added to the firm.

Charles F. Hunter is certainly a member of the bar whose prominence is due to hard and conscientious work, methodically and ably performed. He has concentrated his energies, has eschewed politics and secret societies and given little of his time to anything outside of his profession. He is, however, a member of the Milwaukee, Country and Lawyers clubs, of Milwaukee, as well as of the reform club of New York, the Milwaukee bar association and the American bar association.

#### HENRY J. KILLILEA.

Henry J. Killilea came to the Milwaukee bar in 1885, and at the end of thirteen years of active practice has taken a place among the leading lawyers of the city and state. Like a few other members of the local bar who have achieved distinction, he is a native son of Wisconsin, having been born in the town of Poygan, Winnebago county, June 30,

1863. His father, Mathew Killilea, and his mother—who, before her marriage, was Miss Mary Muray—were born in Ireland, and came to Wisconsin in 1849. They were worthy pioneers of Winnebago county, settling in what was then practically a wilderness and carving out of the forests of that region the farm upon which they still continue to reside.

As a boy Henry James Killilea—as he was christened by his parents—was an apt pupil, fond of books and the local debating societies, and gave early evidence of the fact that the bent of his mind was toward the law. Until he was twelve years of age he attended the country schools; after that he was sent to the graded schools of Winneconne, and still later to the normal school at Oshkosh, where he was fitted for college. When not in school he did his share of work on the farm; his home training was always of the kind which inculcates the idea that industry is a cardinal virtue. After completing his preparatory course of study at the normal school he taught school for a time at Clay Banks, in Door county, and for two years thereafter taught what is now the Oakwood high school at Oakwood, Wisconsin. As an educator he was thorough, competent and entirely successful. Although he liked the work, it was never his intention to continue teaching, but, like many others, he used it as a stepping stone to the profession for which he had determined to fit himself. A spirit of independence led him to prefer that his higher education should be acquired through his own efforts, although his parents were in full sympathy with his aims and purposes and by no means averse in supplying needed funds.

In the fall of 1882 he entered the University of Michigan at Ann Arbor, and remained there until he had completed his law studies, graduating from that institution in the class of 1885. While in college he was a close student, and at the same time was conspicuous for his devotion to college sports. Active in all kinds of athletics, he was captain of a college football team, an enthusiastic patron of the gymnasium, and a warm advocate of the importance of physical culture. Leaving the university fully equipped physically and mentally for the professional work upon which he proposed to enter, he came at once to Milwaukee, and in the summer of 1885 began the practice of law, form-

ing a copartnership with Paul M. Weil. This partnership was dissolved in 1887, and, later, he formed a partnership with Oscar Fiebing, the firm thus constituted building up a very large and lucrative practice in a comparatively short time. At the outset of his career as a practitioner Mr. Killilea demonstrated his signal ability as a trial lawyer. For several years he gave a large share of his attention to criminal practice, and it is doubtful if any lawyer who has practiced at the Milwaukee bar has been more uniformly successful than has he, in the management of this class of cases. Admirable tact, good judgment, and thorough knowledge of the law involved in cases at bar have been notable among his characteristics as a lawyer, and as an advocate of peculiar power and effectiveness in addressing a jury he has few equals among the younger members of the Wisconsin bar. A clear reasoner, he addresses himself, in his arguments, to material points and wastes no time on matters immaterial to the issues involved. Jealous of the interests of clients and absolutely fearless in the defense of their rights, quick to perceive the bearing of a proposition or the trend of evidence, he is no less skillful and resourceful as an examiner than he is forceful and eloquent as an advocate.

While he has been remarkably successful as a criminal lawyer he has also built up a large general practice, and as a counselor and advisor has steadily grown in popular favor. As one of the attorneys of the Chicago, Milwaukee & St. Paul Railway company he has entered a field of practice which gives a broad scope to his abilities, and as a corporation lawyer he promises to be no less successful than he has been in other branches of the practice.

Devoting himself conscientiously to his profession, sparing himself no effort to promote the interests of clients and to broaden his knowledge of jurisprudence, he has declined official preferment but at the same time has taken an active interest in politics. A democrat in his partisan affiliations, he has helped to formulate the principles and policies of his party in local and state campaigns for some years past, and has also not infrequently taken a prominent part in the conduct of the party campaigns. For three years he was a member of the democratic state



central committee, and served three years also as chairman of the Milwaukee county central committee, proving himself capable and sagacious as a political leader as he is successful as a lawyer. The only public office which he has allowed himself to hold is that of member of the Milwaukee school board, to which he was appointed in 1892 for a term of three years. He was one of the organizers of the West Side bank, in 1894, and is now one of the directors of that bank.

Genial in manner, frank and outspoken, and as fond of all kinds of sports now as in his college days, Mr. Killilea has a peculiarly happy faculty of making and retaining friends among all classes of people, and at thirty-five years of age his professional, social and political future may be said to be full of promise.

He was married, in 1888, to Miss Louise M. Meinderman, who was born in Michigan and graduated from the University of Michigan in the class of 1888.

#### THOMAS HENRY GILL.

Thomas H. Gill, general attorney for the receivers of the Wisconsin Central lines of railroad, is a native of Wisconsin, born at Madison on April 7th, 1858. His parents were William J. Gill, a native of Canada, and Hannah (Lantry) Gill, who was born at Potsdam, St. Lawrence county, New York, and who still lives at Madison.

Mr. Gill received his preliminary education in the Madison public schools, and entered the Wisconsin state university in 1872, where he graduated with the class of '77, at the age of nineteen. He immediately entered the university law school at Madison, and upon his graduation in the following year was admitted to the bar, when still but twenty years of age. During his entire college and professional courses he worked in the office of the clerk of the United States courts, who was a close personal friend. About the year 1874, he was appointed deputy clerk and master in chancery of these courts, continuing in those offices for several years after his admission to the bar.

He began the practice of his profession at Madison in 1879. In 1880 he formed a partnership there with H. J. Taylor, now of the Sioux City,

Iowa, bar. In 1883 he became associated in practice with E. W. Keyes, at Madison, under the firm name of Keyes & Gill. In a short time, however, important business interests required him temporarily to abandon the practice, and to devote his entire time for about four years to the management of an extensive wholesale tobacco trade.

In April, 1887, he entered the service of the Wisconsin Central companies as claim agent, and has been continuously in the service of these lines of railroad to the present time. He has risen step by step to his present responsible position, always enjoying the confidence of the officers and directors. In 1890 he became assistant general solicitor, and when the Wisconsin Central lines passed into the control of the Northern Pacific railroad company as lessee, in 1891, he was appointed to the same office for the lessee company, with headquarters at Chicago. When the lease was surrendered in 1893, and the receivers of the Wisconsin Central companies were appointed, he was retained by the receivers as their general attorney, returning to Milwaukee. This office he still fills.

Mr. Gill has led a life too busy to indulge extensively in the amusements of society, although he enjoys the warm devotion of a wide circle of friends. He is a member of the college fraternity of Psi Upsilon, and is a loyal son of his alma mater. College sports and athletics, and all gentlemanly sports, find in him a warm sympathizer and supporter. Politically, while in conviction and sympathy a republican, he has never sought nor desired political preferment or notoriety, and has always maintained an attitude of independence. He is unmarried, but maintains his own home, where he loves to receive and entertain his friends, and to gather about him works of art, in the collection of which he loves to spend his leisure hours.

#### CONRAD KREZ.

Conrad Krez, lawyer, legislator, soldier and poet, was born in the palatinate of Bavaria, a province on the Rhine in Germany, April 27, 1828; educated at Spire and in the universities of Munich and Heidelberg. He came to the United States in 1851, and resided in New York

city from the opening of that year until August, 1854, when he came to Wisconsin and settled at Sheboygan, where he resided until 1885, when he became a resident of Milwaukee, where he remained until his death. From the time he settled in Sheboygan county he practiced law except while in the military service or holding an office which required all his time. He was city attorney of Sheboygan in 1857-'58; district attorney of Sheboygan county to the fall of 1862, and from 1870 to 1876 inclusive. Mr. Krez resigned the district attorneyship in 1862 and enlisted in the twenty-seventh Wisconsin when that regiment was organized; he was commissioned its colonel. During his military career he was brevetted brigadier general. On concluding his military service he returned to Sheboygan, resumed the practice of the law and continued therein until 1885, when he was appointed collector of customs of the port of Milwaukee, to which city he removed his residence; at the expiration of his official term he began the practice of the law, and continued therein until his death. In 1891 he was a member of the assembly and in 1892 was elected city attorney for Milwaukee and served out his term. He died March 8, 1897.

Col. Krez has left an excellent record as a lawyer, legislator, soldier and citizen. In politics he was a democrat, his creed being expressed by himself thus: "Believes in an indestructible union of states, subordinate to the federal government in all matters in which the same is clothed by the constitution with sovereignty, but in all things else sovereign themselves." The tedium of his law practice was relieved by literary labors, which gave him considerable renown as a poet, particularly in Germany and among educated German-Americans.

#### H. A. J. UPHAM.

H. A. J. Upham, younger of the two sons of Hon. Don A. J. Upham, has succeeded his father, as a member of the Milwaukee bar, and maintains the prominence of a name long a familiar and honored one in this connection. Born in Milwaukee August 14th, 1853, Horace Alonzo Jaques Upham belongs to the generation of young men who have been called upon to shoulder important responsibilities bequeathed





*H. J. Pham*



to them by the pioneers who were their immediate predecessors. He received his early education in the schools of Milwaukee and then entered the University of Michigan at Ann Arbor. He graduated from that institution in 1875, and upon his return to Milwaukee immediately began the study of law, first in the office of Wilson Graham and afterward in the office of Jenkins, Elliott & Winkler, Judge James G. Jenkins, now on the United States circuit court bench, being at that time the senior member of the firm. Admitted to the bar in 1877, he became identified two years later with one of the oldest law firms in the city—that of Wells & Brigham. In 1852 Charles K. Wells and Jerome R. Brigham formed a partnership which had been in existence twenty-seven years when Mr. Upham entered the firm as junior member, and the firm name was changed to Wells, Brigham & Upham. With an established reputation as capable and successful lawyers in general practice, the members of this firm had become noted as safe, conservative and candid counselors, and especially successful in litigation where large interests and difficult questions were involved; and when Mr. Upham entered the firm he took at once an active part in the important matters of which it had charge. Real estate, commercial and corporation law, as well as the care of estates, the guardianship of trust funds, and watchfulness of financial investments of clients, were all parts of the practice of this firm, and in the conduct and management of the affairs committed to his charge Mr. Upham has evinced the tact, good judgment and business ability of a capable man of affairs, as well as the care and conservatism of a well-equipped and thoroughly competent lawyer.

Among the suits commenced by Mr. Upham is that of Hawley vs. Tesch, which was prosecuted by Mr. Upham for eight years, having been twice appealed to the supreme court. In this suit he was in every way successful. The suit has become noted on account of the large amount of property involved and the fact that as a result of the litigation the clients of Mr. Upham have not only won their lawsuit but also recovered their property. (See volumes seventy-two and eighty-eight of the Wisconsin Reports.) By means of this litigation the heirs of Cyrus Hawley recovered several hundred thousand dollars' worth of



property, of which they would never have become possessed except by the successful prosecution of this suit.

The deaths of Charles K. Wells in 1894 and of Jerome R. Brigham in 1897 left Mr. Upham the surviving member of the firm of Wells, Brigham & Upham. On May 1, 1897, the new firm of Fish, Cary, Upham & Black was organized, by the consolidation of the business of the two firms of Wells, Brigham & Upham and Fish & Cary; and since that date Mr. Upham has continued the practice of law as a member of the new firm.

Mr. Upham is in full sympathy with progressive movements of all kinds, and has contributed in many ways to the advancement of business enterprises of various kinds, and also to the advancement of social, moral and other reforms. He was married in 1889 to Mary Lydia, daughter of Thomas A. Greene, one of the older merchants, and for many years one of the best known citizens of Milwaukee.

#### WINFIELD SMITH.

The family from which Mr. Smith is descended has given him, through the gift of nature, many of the qualities of which his success has been the fruit. His father, Captain Henry Smith, of the United States army (Sixth infantry), and a graduate of West Point, was of Scotch-Irish descent, although born in Stillwater, New York; while his mother, Elvira Foster—also a member of one of the best families of New England, afterwards resident in Watertown, New York, where she was born—was a lady of unusual education and culture. The father saw severe military service in the Blackhawk war, but resigned his position in the army in 1835 or 1836, and for several years was in charge of important harbor improvements under the direction of the government, on Lake Erie. He also served for two terms as a member of the Michigan legislature. When war with Mexico was declared he immediately offered his services to his country, and was appointed in 1847 quartermaster on the general staff with the rank of major. He was on duty at Cincinnati in May of that year (1847) when he received orders to proceed immediately to Vera Cruz, and went directly to the seat of war. Knowing the dangers of the climate, he hardly expected





Nelke & Son, New York

*Winfield Smith*





to return, and made his arrangements and addressed his farèwells with that end in view. He reached his destination in the latter part of June, and assumed the discharge of his duties on July 1. In about two weeks he was stricken with yellow fever, which was then raging with terrible violence, and died on the 24th of July.\*

The son, Winfield Smith, was born at Fort Howard, in the territory of Michigan, afterwards Wisconsin, where his father was then stationed, on August 16, 1827. The name bestowed upon the small stranger was in tribute to General Winfield Scott, of whose military family Captain Smith was a member for five years. As the advantages of the public and private schools were hardly to be secured in abundance in the day and environment of his youth, his education was a matter of unusual personal care on the part of his parents, and so fully did they amend and supplement such opportunities as he had that in 1844, then in his seventeenth year, he entered an advanced class in the Michigan state university and was graduated with high rank two years later. He developed remarkable aptitude in the sciences and mathematics, displaying a remarkable progress in both, and standing at the head of his class in the study last named. He had been behind his class in Greek upon entering, but soon caught up and held his own with the rest. As he had become thoroughly proficient in French while at school in Watertown, New York, in 1840, and as he learned the German after removal to Milwaukee, and also reads Italian fairly and speaks it somewhat, he may be regarded as a linguist of no ordinary grade and adds to his other lines of culture those possible only to one who has access to the learning and literature of other lands.

Upon his departure from the university in 1846 the young man took charge of a private school in Monroe, Michigan, where his father was professionally located, and which had been his home since 1833. In the year following he retired from the school and assumed the duties of private tutor to a small class in advanced classics, which gave him time to fulfill his long-cherished desire to commence the study of law.

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\*The proportion of the American soldiers who died of this disease in Vera Cruz, that summer, was greater than the proportion of those who were killed in all the battles of that war.

In 1848 he entered the office of Isaac P. Christiancy, afterwards a justice of the supreme court of Michigan and later senator of the United States. He applied himself to his legal studies with earnest industry and mental thoroughness and when he was admitted to the bar it was with an equipment of knowledge and reading that few young lawyers possess. In October, 1849, he was led to the decision that the young and growing town of Milwaukee was a promising place in which to commence the real labor of life, and accordingly decided to make it his home. He entered the office of Emmons & Van Dyke, a firm of high standing, where he still pursued his studies, and soon entered upon practice. In February, 1850, he was admitted to the supreme court of Wisconsin, over which Judge Whiton then presided. In 1851 he opened an office of his own and remained by himself until 1855, when he formed a partnership with Edward Salomon, afterwards governor of Wisconsin. This connection continued for fifteen years, and was only severed because of Mr. Salomon's departure to New York. From 1869 to 1875 he was associated with Joshua Stark, under the firm name of Smith & Stark, and in later years was also associated with Matthew H. Carpenter and A. A. L. Smith, under the firm name of Carpenter & Smiths. Upon Mr. Carpenter's death the firm name was changed to Winfield & A. A. L. Smith. This association terminated in 1883.

Soon after his admission to the bar, and while on a visit to his old home in Michigan, Mr. Smith was appointed to the office of United States commissioner and master in chancery by Judge A. G. Miller, of the United States court. This honor was bestowed upon him without his knowledge or solicitation, but he accepted and performed nearly all the business of that character in Milwaukee until his resignation in 1864. Some of the questions brought to his judicial decision were of great importance, as the period covered the exciting slavery agitation of 1850 to 1860, and the greater portion of the civil war. Among them were the fugitive slave riots and the Booth prosecution.

In 1862, when James H. Howe resigned the office of attorney general of Wisconsin to enter the Union army, Governor Salomon, who was compelled to confront many crises and take many daring risks be-

cause of the exigencies of war time, asked his old partner to accept the vacancy, knowing that in Mr. Smith he would possess an adviser whose knowledge of the law was reliable, whose patriotism was unquestioned and whose personal friendship was of the most loyal character. The offer was accepted, and when the term expired in 1863 the people of Wisconsin ratified the choice of the governor by electing Mr. Smith to the full term, which terminated on January 1, 1866. He entered upon the discharge of his duties with the same intelligent devotion that he had bestowed upon the business of his clients and served the state as loyally as he would have served his own personal interests.\* He never left his work to others, but appeared personally before the supreme court in all the cases in which the state was interested, with the exception of a few of a criminal character, which the district attorneys had prepared and desired to present in person. In this labor Mr. Smith was successful, with hardly an exception.

It was while holding the office of attorney general that Mr. Smith was able to perform a large service to the state, to win a great measure of public applause, and to demonstrate the possession of industry, ability and legal knowledge, by his course in connection with the Milwaukee & Rock River canal claims, and the unadjusted accounts between Wisconsin and the United States. The full history of that service cannot be recounted within the limits of this sketch, but only enough to show the magnitude of the interests involved and the difficulties that lay in the way of any settlement advantageous to the state.

The canal company was an outgrowth of that spirit of improvement that was apparent at Milwaukee even in an early day. Congress had granted to the territory of Wisconsin, to aid in the building of a canal between Lake Michigan and Rock river, a large amount of public land; and it was the expectation of the canal company to obtain these lands when it should build the canal connecting the points designated. The work was commenced, and all of the line that was ever built was one mile within what is now the city of Milwaukee. From this it obtained an immediate benefit in the shape of valuable water

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\*To quote General Fairchild's terse opinion of Mr. Smith's labors: "He was the best attorney general Wisconsin ever had."



power, as it included a dam across the Milwaukee river. Claims for "relief" from the territory had been suggested or advanced from time to time, and finally crystallized into a demand that all money expended by the canal company ought to be refunded by the territory, as the latter had never given the company the lands obtained from the general government for canal purposes. The company also set up the claim that it had been prevented from going on with its work because the territory had refused to deliver these lands; that great damage had befallen its interests because of this refusal, and that instead of fostering its interests as expected the territory had dissolved all connections with the company and sold the lands to others. Not only was this claim advanced at home, but presented to Congress; and while that body did not do anything for the company's relief, it still gave enough attention to the demand to withhold from Wisconsin the proceeds of the swamp lands, which, under other laws, were due to the state. The representatives of the company seemed, as they claimed, to have sufficient influence with Congress to prevent the state from securing these and other lands, and the proceeds of their sales, to a large amount. In short, while the company made small progress in the way of securing any benefits for itself, it was still able to embarrass Wisconsin by causing the general government to defer its settlements with the state, which had succeeded to the rights of the territory, until the canal question was adjusted. All payments by the general government to the state on account of sales of land were stopped. Mr. O. H. Waldo, one of the strong men of the Milwaukee bar, was attorney for the company, and by many brilliant and plausible arguments caused many members of Congress, members of the legislature and others to believe that Wisconsin had really abused and injured the Milwaukee & Rock River Canal Company.

To go back a moment: These lands, on the line of the proposed canal, between Milwaukee and Rock river, had come into great demand for actual settlers. The territory retained possession of them for some time, but was finally compelled to sell, rather than retard settlement by keeping them longer out of the market. A proposal was made to refund the money received in these sales to the general government, but

the latter declined to accept it. The territory would not give it to the canal company for the reason that it already had advanced the company more than enough money to pay for the proportionate share of the work done. The territory had already borrowed ten thousand dollars at a great sacrifice; and it became evident after a time that the company never could and never would construct the canal; that the proceeds of the grant of land would pay but a trifling part of the cost of the canal, and that the corporation had no other means with which to build it. The territory, therefore, very wisely refused to entrust to the corporation the lands or the proceeds thereof, which would have been simply lost to the public.

We do not know the aggregate of the claims made by the canal company upon the state, but it is said to have been up in the hundreds of thousands of dollars. The small amount of knowledge held by the after generation as to the facts of the case, the difficulty of obtaining information, as all the books and documents were in the hands of the claimants, and the ingenuity and persistence of Mr. Waldo and his coadjutors all combined to aid the company's cause; and had the matter only received a superficial examination or been left in the hands of ordinary competence, a settlement far less honorable to the state than was secured would have been the result. The time came in 1862 when a formal movement was made to secure such settlement and the litigation took steps leading in that direction.\* A commission was appointed and in 1863 Governor Salomon explained its action in a brief communication to the legislature in which he said:

“Executive Office, Madison, Feb. 2, 1863.

“To the Senate and Assembly: I lay before you the report of a board of commissioners appointed in 1862 to ascertain and settle the liabilities, if any, of the state of Wisconsin to the Milwaukee & Rock River Canal Company. The opinion of the attorney general, which forms a part of this report, I commend to your especial and careful consideration.”

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\*It should be remarked, in passing, that a large share of credit should be awarded J. Allen Barber for having caused the postponement of the claim in the legislature long enough to have it thoroughly understood.

The governor added that it was the province of the legislature to determine what further steps should be taken. The commissioners, in their report, said that they placed the matter in the hands of the attorney general, Winfield Smith, to make an examination of the facts and to give his opinion of the law. His reply convinced them that the canal company had no claim against the state.

Mr. Smith's report, which was exhaustive and showed complete research, bore date of December 31, 1862. It recited the facts connected with the history of the case, disposed of the various claims, one after another, and summed up his conclusions in the following manner:

"Upon the whole, I conclude that the Milwaukee & Rock River Canal Company acquired no rights through the act of Congress granting lands to the territory for the purpose of aiding in opening the canal. That it acquired no rights through any subsequent act of the territory (except, perhaps, for a time under a contract afterward completely performed). That the canal company sustained no damage by the legislative act of which it now complains."

After the presentation of this opinion from the attorney general of the state the canal company was unable to get any legislation whatever from the state in its favor, yet still possessed enough influence in Congress to obtain action, which, it should be remarked, the state did not oppose. On July 1, 1864, Congress passed a joint resolution which ordered that Wisconsin should be charged for the land given under the canal grant (125,431 acres); and that, on the other hand, the state should be credited with the amount expended in selling the lands, and whatever had been paid to the construction of the canal. It was further ordered that the state "also shall credit to the canal company such money as was used in construction to that date and in managing and keeping the same in repair"—this sum not to exceed the amount charged against the state of Wisconsin on the sales of said canal lands; the same to be received by the company in full satisfaction of all claims against Wisconsin or the United States.

The claims of the company against the state had been great, and this resolution gave it all it had proper claim to—not to exceed the amount received by the state from sales of the canal lands. The state



stood ready to effect a settlement, and had been in that condition of readiness for years.

The commissioner of the land office was appointed to audit the claims and determine what should go to the company and what to the state. Attorney General Smith had been carefully investigating all the sources of information at his command, and proceeded to Washington fully prepared to produce the truth and defend the interest of the state at all points. He spent the greater portion of the winter of 1865 in the national capital, Mr. Waldo being present in behalf of the canal company. The result of that extended hearing can best be given in the final report as made by Mr. Smith to the governor of Wisconsin on March 24, 1865. The governor, James T. Lewis, on forwarding it to the legislature, made use of the following appreciative words:

"I inclose herewith a report from the attorney general to me of his action in the premises and take occasion to say that he is entitled to great credit for the energy and ability he has displayed in aiding to bring about this adjustment."

The report gave a detailed statement of the amount of labor required to get all the facts in the case—a herculean task in view of the long time that had elapsed. In conclusion the attorney general said:

"I take pleasure in announcing that with these exceptions (certain minor sums which are enumerated) every item claimed by the state was finally allowed by the commissioner, and the claim was settled at \$56,527.14.

"The account then passed to the secretary of the interior. In his office it was carefully reviewed and I furnished explanations upon the points which were misunderstood or doubted, including some which had not been previously objected to. I had reason to feel that these explanations were satisfactory and that the amount allowed by the commissioner would not be reduced. I was at this point summoned to Madison to attend to certain pressing office business, and, therefore, I was unable to remain until the account should be formally passed. I learn that the adjustment had since been completed, without making any changes.

"The summing up the canal fund account now stands thus:

Amount charged by United States for canal lands at \$1.25 per acre .....	\$156,789.77
Amount received in loan, which, with the interest paid, is now allowed to the state by the United States.....	1,000.00
Total .....	\$157,789.77
Deducting expenditures of the state allowed on above.....	56,527.44
Amount due from state.....	\$101,262.33

This adjustment opens to the state the enjoyment of the five per cent fund, so-called, which has been retained by the United States until moneys received by the territory on sale of the canal lands should be accounted for. The amount of that fund was, on the 31st day of December, 1862, \$250,139.11. Deduct from this \$101,262.33, the balance fund due from the state as above, and the remainder, now owing to this state, is fixed at \$148,876.78.

Every dollar of this sum and the far larger sums since flowing into the fund, have been paid over to the state without further delay or objection. The amount that went to the canal company was just what it expended and no more; what the state was willing it should get and what the attorney general believed was its proper and legal due.

Another case of importance which contained matters of unusual public interest was that which concerned the celebrated draft riot, and the enforcement of the draft in Ozaukee county during the war, involving the constitutionality of acts of Congress authorizing the conscription of citizens and their enrollment in the military service of the country; also the power of the governor of the state to enforce those acts. It was a time of great excitement, and a crisis in public affairs, party spirit running high and every word and movement attracting an excited public attention. Upon the final appeal to the supreme court all the acts of Governor Salomon in enforcing the draft, including the arrest of citizens and their imprisonment in the military camp at Madison, were declared to be constitutional and in pursuance of law, and the power of the government to act for its own preservation fully sus-

tained. Mr. Smith, as attorney general, exhibited a complete mastery of all the features of the case, and his success in the final decision of the supreme court was due to close study, careful arrangement, and the full preparation made for the trial by the governor and himself, in which Mr. Carpenter voluntarily gave able assistance.

In 1872 Mr. Smith was selected as the representative of the seventh ward of Milwaukee in the state legislature. He was not a candidate for the place and did not wish it, but the people of that ward—one of the most intelligent in the city—insisted upon it, and he could not well refuse. He gave three months of the hardest work of his life to his duties in that capacity, and from the first was one of the recognized leaders of the house. He was chairman of the judiciary committee at a time when important amendments to the constitution had just been adopted, and it threw severe and continued labors upon that committee, whose duty it was to see that all legislation was in accordance therewith. The greater part of the work performed by Mr. Smith in this capacity was therefore of a negative character; and so busy did it keep him that he had time and occasion to draw but one bill, which was one of the shortest ever placed upon the statute books: "Section 1. The day of the general election shall be a legal holiday."\*

Mr. Smith procured the passage of several acts, among which was one that must be regarded as one of great practical importance. It was the law authorizing the school lands commissioners to loan from the school and other trust funds of the state, to the city of Milwaukee, money for the construction of the water works of the city, then about to be undertaken. This plan of making several questions answer each other, and all for the public good, was originated by Mr. Smith and had the advantage of providing for the use of state funds then lying idle by a loan made perfectly secure; and also of furnishing money to the city at a time when its credit was not as good as at present, of

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\*Some clerk of the assembly who could not make up his mind to sanction an act so contrary to his idea of proper legislation, added under a general rule which gave him authority, another section, which, although he did not know it, was an absurdity. "This act shall take effect from and after its passage." It obviously could not take effect until the day of election, which would be in November, by which time it must take effect under the constitutional provision.



increasing the school fund and promoting the water works. This plan was opposed first as a novelty, but before the end of the session its advantage was so clearly seen that its supporters were largely in the majority. Mr. Smith also strongly supported the law making an annual appropriation of ten thousand dollars for the university of Wisconsin, in addition to the funds it already possessed. He had previously suggested and ardently supported the legislation conferring the right to vote on the soldiers without the state.

Mr. Smith might have spent a large portion of his time in public station had he followed the wishes of those about him instead of consulting his personal choice and his love for the work of his profession. In 1859 he was nominated for state senator by the republican convention of the sixth district, but was constrained to decline the honor because, as he said to those who had thus honored him by their choice, "there are confided to me in professional and various capacities rights and interests of other persons which demand my whole time and attention. I am not at liberty to neglect or lay down those trusts at this time, and I cannot fulfill them consistently with that devotion to public interests which should be exacted from a senator representing one-half of Milwaukee county." In 1876 he was tendered the appointment of United States district attorney to succeed Judge Levi Hubbell, resigned, but declined to accept. When Judge Miller and afterwards Judge Howe retired from the bench of the United States court of the eastern district of Wisconsin, Mr. Smith was upon both occasions urged to accept the place, as he was also urged to become a candidate for the supreme bench of the state upon Judge Ryan's death. In 1881 it was the almost unanimous wish of the bar and public that he should accept a republican nomination or become an independent candidate for circuit judge to succeed Judge Small, whose term was to expire that year. In all these cases he not only refused to take any step toward the fulfillment of the general desire, but, on the contrary, prevented his friends from using his name in connection with the position.

Mr. Smith has been connected with the social and business life of Milwaukee in many ways other than political or legal, only a portion of which can be mentioned in this summary of his life's labors. He has

been vice president of the Wisconsin Humane society, and an active worker for that noble organization; was the first president of the Milwaukee Chess club; in 1851 he was secretary of the Young Men's association, a society founded for the advancement of education and culture, and that laid the foundation of the great public library now under city control. Mr. Smith was president of and a large stockholder in the Cream City Street Railroad company, and through that corporation and others has made his energies, ability and means contribute to the growth and development of Milwaukee's material interests.

That Mr. Smith almost from the day of his first appearance at the bar of Milwaukee until he retired in 1888 held a commanding position and was engaged in an extended and lucrative practice, goes almost without the saying, in view of the outlines of public usefulness and public confidence given above. His clients were among the leading men and firms or corporations of Wisconsin, and he has been connected with some of the most important and intricate cases recorded in the legal history of the state. While it would be impossible to mention all these within the brief compass of this sketch, reference can be made to one or two. One of these grew out of the controversy between the stockholders of the old Milwaukee & Prairie du Chien Railroad company and the Milwaukee & St. Paul Railroad company, in which the latter great corporation was enjoined from absorbing and destroying the former company until the rights and interests of its stockholders were protected in a satisfactory and equitable compromise.

The vast pecuniary interests involved in this case greatly enhanced Mr. Smith's reputation at the bar, and led to retainers in some of the most important litigations of the period.

The genius of no lawyer can supplant hard work, and it did not with Mr. Smith. He studied his cases thoroughly and he studied both sides, and was therefore prepared to meet any point of argument which might reasonably be expected from an adversary. A mention of several important litigations with which he has been connected should be added to those already referred to. He was retained in behalf of the defendants, in 1875, in a number of the prosecutions commenced by the United States against persons charged with violations of the revenue laws.

These cases were of much importance to the parties interested, and at the time attracted great attention. The results were generally unfavorable to the defendants, but his clients were entirely satisfied with the strenuous and able efforts of Mr. Smith, and his partial successes were regarded as victories, considering the odds against which he had to contend. His practice in revenue cases had, before this, been extensive, and his knowledge of that department of professional labor was exhaustive. For several years he was a partner of Joshua Stark, and they conducted among others a litigation involving the management of the Sentinel company, in which case they won a signal triumph and much credit also.

But no case in Wisconsin has for many years been the subject of more wide attention from business men than the action brought by Daniel Wells against Peter McGeoch, both of Milwaukee, to recover a very large sum of money which the plaintiff claimed he paid by reason of the defendant's misrepresentations to him. This was popularly known as "the lard case," all members of the bar know its history. The principal defense was that the transactions between the parties were illegal, because they were in violation of the Illinois statutes forbidding what is understood as "corners," and the defendant claimed the subject of the controversy to be money gained by the parties in one successful corner and lost by them in the lard corner. The case was decided in the lower court in favor of the defendant upon this ground, and argued before the supreme court on appeal, the principal question being whether the illegality mentioned constitutes a valid defense. The case was begun in 1883, and was very voluminous, and required almost continuous labor from the counsel. The brief drawn by Mr. Smith extended over nearly a hundred printed pages, and although lengthy (as it was exhaustive) was considered by attorneys as a model for method of arrangement, logical statement and perspicuity.

The case of Wells vs. McGeoch was decided by the supreme court in favor of the plaintiff and a judgment was rendered on his behalf through which he collected over \$250,000 from McGeoch. Soon after that result was accomplished, Mr. Smith being much in need of rest, went with his two daughters and others to Europe, where he traveled in Eng-



land, Germany, France, Holland, Switzerland, Austria and Italy, returning to Milwaukee in November of the same year, 1888. This trip he greatly enjoyed, it having satisfied his curiosity to see cities and works of the old world which he had long desired to know.

Soon after his return he entered into negotiations which resulted in the sale in the spring of 1890 of the property of the Cream City Railway company. The proceeds of this sale divided in equal proportions among all the stockholders, gave to them a satisfactory profit. It released Mr. Smith from the management of the road, which had been for about twelve years upon his shoulders, and which he was pleased to lay aside when the investment had been converted into money. He had given much time and attention to the duties at a very moderate compensation, and regretted not only the loss of time from his professional pursuits, but the fact that to so many persons he was known not as a member of the bar so much as president of the railroad.

The position Winfield Smith held as president of the Cream City Railroad company came to him by a natural sequence of circumstances and was unsought and undesired. He bought some stock in the road by way of patronizing a public enterprise and was elected a director. The company was not prospering as well as the stockholders could wish. His efficiency as a director was quickly recognized; a change of management was desired, and the burden of executive responsibility was shifted to the shoulders of Mr. Smith. When he assumed control in 1878 the stock was worth but sixty to seventy cents. It afterward appreciated to upwards of one dollar and sixty cents, and the stockholders may be taken for good authority that much of the credit for this gratifying appreciation belongs to their former president.

With the portion of the money obtained from the sale of the property of the Cream City Railway company Mr. Smith acquired an interest in the Menominee Falls Quarry company and in the Milwaukee & Superior Railway company; about one-sixth of the whole of each. He was elected president of each of those corporations and the result has been continual labor and care of a degree of which he had no anticipation. The railroad, running from Granville, in Milwaukee county, to Sussex, in Waukesha county, twelve miles, has been lately extended

nine miles further westward to North Lake, and its construction has created for Mr. Smith a large amount of labor, including many and troublesome details.

In March, 1895, he went with his wife and younger daughters to the Mediterranean, stopping at Gibraltar for a three weeks' tour in Spain and to Tangiers, thence going to Italy. Later they spent a couple of months in Switzerland, and as much more in France. Called by business, he returned to Milwaukee, leaving his family in Paris. After a winter of work, he sailed again in March for Naples and rejoined his family in Rome.

In May he started north and in June, with his family, met his eldest daughter who had arrived there from Boston with her husband, Dr. N. W. Emerson, whose health was much broken down. After some rest in the Isle of Wight they traveled together through England; the doctor, quite recovered, returned in the fall, and Mr. Smith and his family, after a month's trip to Holland, started for the United States; after paying a number of visits to more intimate friends they arrived in Chicago in January, 1897.

Mr. Smith hastened to resume his labors in Milwaukee, which have ever since occupied his attention.

When in 1888 he started for Europe he formed a partnership with Mr. Rosendale in the practice of law, which continued for some time, but before Mr. Smith started the second time for Europe it had been dissolved and he had abandoned the practice of law, sending most of his books to the office of his younger son, who is engaged in the profession in Seattle, Washington.

Politically Mr. Smith was of democratic antecedents, but when he came to the full consideration of the great questions confronting the people of America in his early manhood and saw the wrong and the dangers of slavery, he made his choice according to the dictates of patriotism and conscience. He gave a reason for his change of faith and set it forth ably and fairly in a letter to his old legal instructor, Mr. Christiancy, bearing the date of September 20, 1856.

Being opposed to slavery, it was impossible for Mr. Smith to be anything but an earnest and outspoken friend of the Union cause when

war was declared by the slave-holding power, and to labor in all possible ways for the success of the north. He was vice president of the first committee organized in Milwaukee for the support of the war. He had fully arranged to enlist and go to the field of actual service when the demand was made upon him by Governor Salomon that he should go to Madison and give the same loyal and needed service in another line of duty. But he did not confine his activity to that labor. He was constantly laboring at all seasons and in many ways for the Union's good, urging enlistments, and looking after the families of those who were left behind. His war speeches were among the best and most effective of any of those delivered in the west.

In addition to his speeches, Mr. Smith made continual use of the pen, and the republican press of the state during war days could furnish many evidences of that fact, in editorials and communications. He was also author of a vigorous and keenly humorous ballad, which showed McClellan to the world in a humorous light—a versification that found great favor at the time, but whose authorship was known to but few.

The qualities of manly resolution and intellectual strength which belonged to the father and of culture and refinement that were the possessions of the mother, have united to produce in the son a character and bearing that have won him admiration and friends and enabled him to secure and retain the public confidence and respect that he has for so many years held. The superior education which through opportunity, application and a deep thirst for knowledge Winfield Smith has gained has supplemented his natural gifts, and much of the force and polish of his writings and forensic efforts may be attributed to his familiarity with classic models and the literature of ancient as well as modern times. Among his mental characteristics may be mentioned keen discernment of the meaning and measure of things about him, determination to accomplish whatever he undertakes, self-reliance, an independence of thought and action, and an imagination fervid, and yet tempered with good judgment. With an analytical mind he reached his conclusions by the way of logic. Taking nothing for granted, he demands a reason for every proposition that is submitted to his understanding. He does



not form his opinions suddenly or from impulse. His beliefs are the fruits of experience or ripened and intelligent study, based upon all the facts than can be brought to his knowledge. A fine natural orator, he has been called to the public platform upon many important occasions, and has ever acquitted himself with honor and to the gratification of those whom he addressed. During the last ten years Mr. Smith has given much thought to religious subjects, looking at them in a much broader way than in the earlier part of his life and gradually releasing himself from the ties of dogma and from adhesion to sectarian doctrine. He has moved with those who have freed themselves from the shackles of beliefs which were once considered an essential part of religion, and he yields reverence to those fundamental principles which are calculated to secure the welfare of men as well as the favor of Deity.

His married children are widely scattered, residing in Seattle, Chicago, Boston and in England, and he looks hopefully to a day when, resting from his present labors, he may again devote time to their society and to the pleasure of travel.

He has visited most parts of the United States and a large part of Europe, but always finds enjoyment in going further or renewing his acquaintance with famous places and famous works of art and science.

#### CORNELIUS I. HARING.

Cornelius I. Haring, secretary of the state bar association, was born on the 4th of April, 1860, at New City, Rockland county, New York. His father, Dr. I. C. Haring, one of the best known physicians in Rockland county, and his mother, Sarah (Tallman) Haring, are both members of old Holland families\* who emigrated to New Amsterdam in the middle of the seventeenth century.

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\*The official records of Rockland county, New York, show that the soldier, Jan Pieter Haring, of the Peninsula of Horn in Holland, was the great-grandson of patriot John Haring who distinguished himself in many ways in Holland's battles for freedom against Spain, and whose acts of heroism are so vividly described in Motley's *Rise of the Dutch Republic*. Jan Pieter Haring, the ancestor of the American branch of the Haring family, emigrated from Holland to this country in the year 1660, and settled on Manhattan Island and owned a farm of one hundred acres in what is now the heart of New York city. This Haring farm extended from the Bowery Lane westward beyond Bedford street and included both sides of Broadway from about

Mr. Haring received his early education in the public schools near his home. After the necessary preparation he entered Rutgers college, at New Brunswick, New Jersey, and graduated therefrom in 1881. He was a member of the college societies of Delta Upsilon and Phi Beta Kappa; was president of his class and of the glee club, business manager of the college paper, and captain of the football team. After graduating from Rutgers he entered the law school of Columbia college, was graduated in 1883 and admitted to the bar of New York immediately after. He came to Milwaukee in 1884, and was first associated with Joshua Stark in the law. In 1887 he went into partnership with Adolph Herdegen. Upon the death of that gentleman, the following year, he formed a partnership with Edward W. Frost, under the firm name of Haring & Frost. Later, Charles E. Shepard came into the

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Waverly place down to a line near Bleeker street. In 1673-4 Jan Pieter Haring was one of the Schoepens to govern the "outside people" on Manhattan Island beyond the then little city of New York, called New Orange. Subsequently many members of his family held many positions of honor and trust in the legislature and on the bench. Orange county, for the first twenty-five years from 1701 to 1726, sent but one representative to the Colonial general assembly; during that time, with the exception of seven years, that representative was chosen from the Haring family.

On July 4th, 1774, at a meeting of the freeholders of Orangetown the Orangetown Resolutions, consisting of seven articles, were drawn up and adopted, which contain the germ of the great principles embodied in the Declaration of Independence. John Haring and Peter Haring, with three others, were appointed a committee for this town to correspond with the city of New York to conclude and agree upon such measures as should be found necessary. John Haring was the chairman of the committee and himself drew the Orangetown Resolutions.

The fifth article of the resolutions of this meeting formed a part of what was known as the "non-importation agreement," which was adopted by the Continental Congress at Philadelphia, October 20th, 1774; this non-importation article was subsequently ratified by the several colonies and was one of the overt acts that precipitated the revolution.

In April, 1775, John Haring was chosen delegate from Orange county, "south of the mountains," to the Provincial Congress and elected president of the same. In 1783-85 and '87 John Haring was chosen delegate from "south of the mountains" to the constitutional convention at "Po' Keepsie."

The Orange county judgeship seems to have been held almost exclusively by members of the Haring family from 1717 to 1788. It is not surprising, therefore, that the subject of this sketch, having descended from such an honorable and prominent family, should have certain attributes of character and mind which would make his success at the law a foregone conclusion—and he has not disappointed the expectation of his friends.—Men of Progress, of Wisconsin.

firm, and the name became Shepard, Haring & Frost. Upon the removal of Mr. Shepard to Seattle, the firm became again Haring & Frost, and so remains. He has succeeded in building up a large general practice, and is considered one of the leaders among the younger members of the profession. He is regarded as well qualified in the management of corporation and probate matters and in carrying on commercial litigation and in settling and adjusting insolvent cases.

Mr. Haring earned his first professional money by defending the anarchist, Paul Grottkau, in civil suits.

He is a republican on principle, but never sought or held a political office. He is secretary of the Milwaukee bar association and of the state bar association, and he is also secretary of the Lawyers' club; member of the committee on amendments to the law of the state bar association, and is a member of the Deutscher club. He belongs to Plymouth Congregational church.

#### CHARLES DIETZ MANN.

Charles D. Mann, junior member of the firm of Rogers & Mann, has earned for himself a substantial reputation at the bar. The son of John E. Mann, judge for so many years of Milwaukee county, he has given special attention to equity cases and probate matters, and his success in these fields has been remarkable.

Mr. Mann, as his name indicates, is of German descent, his mother, Catherine Dietz, being of an old and prominent New York family, some of whose members were politically intimate with Martin Van Buren. Both his paternal and maternal ancestors were settlers of Schoharie, N. Y., where Judge Mann was born, March 4, 1821. He came to the west and to Wisconsin in May, 1854, locating in West Bend, and here, on October 15, of the same year, was born Charles D. Mann.

The boy remained in this locality until he was thirteen years of age, the greater portion of which period his father had been serving his constituents as judge of the third Wisconsin circuit. In 1867 the family removed to Milwaukee, where both professional opportunities



and educational advantages were greater and broader. Here Charles added to the education which he had acquired in the public schools of West Bend a thorough course in the Milwaukee high school, from which he was graduated in 1872. He also enjoyed private instruction, as well as a business training in the hardware store of R. Haney, a pioneer in that branch. After being thus occupied for about a year, he removed to St. Paul, Minn., and engaged in various lines of business.

When twenty-one years of age, however, Mr. Mann had fully determined what his course in life was to be, and, returning to Milwaukee, at once began the study of his profession in the office of Carpenter & Smiths. This practical and invaluable experience and training was followed by a course in the Albany law school, from which he graduated in 1878, being admitted to the bar both at Saratoga, New York, and at Milwaukee, Wisconsin, in 1879. He then re-entered the office of Carpenter & Smiths, and was in the employ of D. G. Rogers for one year before he became his partner, in 1882. For sixteen years, therefore, this fortunate professional connection has continued, and conscientious, hard work has made the firm strong and prosperous.

Mr. Mann has never sought office nor held it. Originally he was a democrat, but is now what may be termed an independent in politics. In religious belief he is an Episcopalian, and, although not identified with charitable or benevolent societies, is a member of such social organizations as the Deutscher and Iroquois clubs. In a word, he is a refined, successful lawyer, social and domestic in his tastes and habits, spending most of his time outside of his business hours with his family. On August 22d, 1883, he was married to Sarah S. Mersereau, of Owego, New York, and they have two children—Gertrude Mersereau and Catherine Mann, the latter being born on her grandfather's seventy-fifth birthday.

#### M. N. LANDO.

A native of Hungary, where his mother still lives, Mr. Lando was born on the 17th of April, 1841, and is a striking type of the energetic, able man of foreign blood who has become so thoroughly assimilated

with the American spirit that he is as much a part of it as though he had never been beyond its influence. His children have also become a portion of the country's higher life, having entered the professional field with intelligence and success.

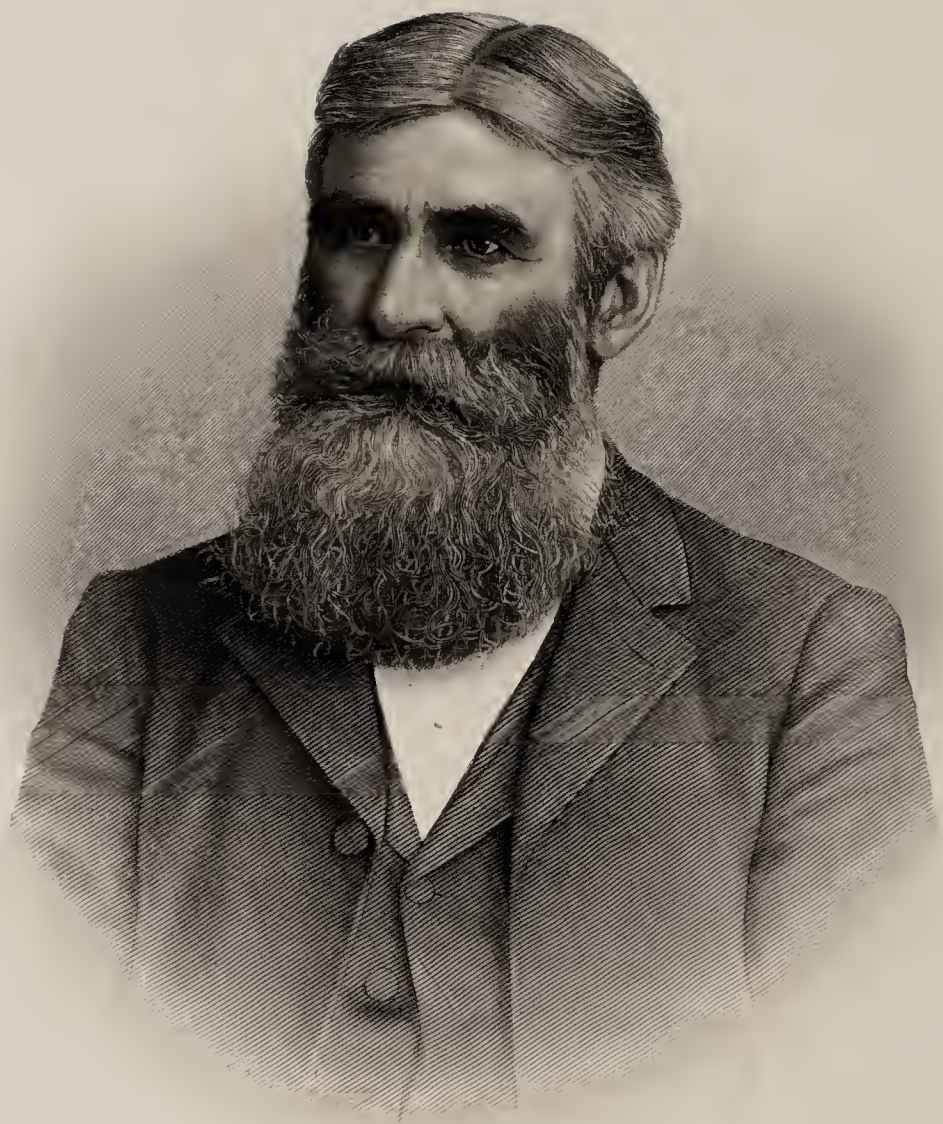
Mr. Lando's parents were David H. and Regina (Klein) Lando, his father being a well-to-do farmer. The boy was not only taught habits of industry but received a thorough education. After digesting all that the lower schools had to offer, he enjoyed a partial collegiate course in his native land and then turned his thoughts toward the country of the most numerous and the broadest opportunities. Coming to the United States in 1865, then a sturdy, ambitious young man of twenty-four years of age, he spent about a year in New York and Ohio, but being convinced that the states further west offered a better field for one of foreign birth, without influence, who had determined upon a professional career, he passed on to Milwaukee where he finally located in 1866.

Commencing the systematic study of the law in the offices of the well known attorneys, Smith & Salomon and J. V. V. Platto (the last named lately deceased), Mr. Lando continued his training at the law department of the Wisconsin university, Madison. He graduated therefrom on April 16th, 1869, was admitted to the bar in Milwaukee and immediately began practice. With the exception of a few months in 1869-70 he has conducted his professional business alone, having been retained in such important cases as *Watkins vs. Blatchinski*, which involved the question whether the proceeds of an exempt homestead are garnishable, he maintaining and the supreme court holding, the negative; and *O'Gorman vs. Fink*, United States marshal. He has also tried many cases involving questions of commercial law.

Although a republican in politics and taking a deep interest in public affairs, whether of local or national import, Mr. Lando has never been a politician. He has served his ward as school commissioner, however, and brought to the discharge of his duties his usual intelligence and acumen. His advice, both as a man and a lawyer, is held in high regard by various business organizations, in some of which he is personally interested. He is president of the Belvidere Realty company and a stockholder in several building and loan companies.







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*Jerome A. Brigham*

Mr. Lando is also widely known for his prominence in the councils of the secret and benevolent societies, having, especially, filled all the chairs in the Masonic and Odd Fellows orders. His social life, which is natural and broad, is centered in his home and family. His wife, whom he married in Milwaukee, was Miss Ida Caspary, daughter of an old, substantial citizen, and his family consists of five children—Belle, David H., Ilma, Victor and Mapa. Belle is a teacher in the Milwaukee high school and David H. is studying medicine.

### JEROME R. BRIGHAM.

By the death of Jerome Ripley Brigham, which occurred in the early spring of 1897, the bar of Wisconsin lost one of its worthy members, and the city of Milwaukee one of its highly honored residents. Mr. Brigham was born in Fitchburg, Massachusetts, July 21, 1825. He came with his parents to Wisconsin in 1839. After attending western schools he entered Amherst college, and was graduated in 1845. While teaching school for a year in Madison he studied law. He was elected town clerk of Madison in 1847, and upon the organization of the supreme court of the state in 1848 he was appointed clerk of the court. Having been admitted to the bar, he resigned in 1851 to begin the practice of his profession.

He formed a partnership in Milwaukee with former Chief Justice A. W. Stow and E. G. Ryan. In the following year this partnership was dissolved and Mr. Brigham became associated with C. K. Wells, thus establishing a professional partnership which continued until dissolved by the death of Mr. Wells in 1892. In 1879 H. A. J. Upham joined the firm, which continued as Wells, Brigham & Upham until Mr. Brigham's death.

Interested in the advancement of education, Mr. Brigham served several years as a member of the board of regents of the university of Wisconsin, and also as a member of the school board of Milwaukee, and as a trustee of Milwaukee college. He was city attorney in 1880 and 1881, a member of the board of fire and police commissioners from the organization of the board in 1885 until he resigned in 1888,

and a member of the legislature in 1887. He was actively identified with the upbuilding and maintenance of Plymouth Congregational church. He was a frequent contributor to the press, and at the time of his death had a financial and official connection with the Milwaukee Sentinel.

Mr. Brigham was married in 1857, at Madison, Wisconsin, to Miss Mary Ilsley; she died in 1894.

### DANIEL GRAHAM ROGERS.

Daniel Graham Rogers was born in West Point, Orange county, New York, November 20, 1824. His parents, William E. and Phoebe (Gallow) Rogers, were both descendants of early settlers of New York. Paternally he is descended from John Rogers who was burned at the stake at Smithfield. Israel Rogers, great-grandfather of our subject, was a minute man during the revolutionary war; and his grandfather, Daniel Graham Rogers, after whom our subject was named, also participated in the war for liberty, serving under Colonel McClaughtery, and participating in the battle of Fort Montgomery. He was a man of prominence in New York state, and at the time of his death was one of the wealthiest men in Orange county. Mr. Rogers is also a direct descendant in the fifth generation, through his grandmother, from Daniel Wilkins, who participated in the Battle of the Boyne, and, escaping, thereafter fled to America and settled in Orange county, New York, about 1691-2. His descendants were all patriotically arrayed on the right side during the revolutionary war, and the great-grandfather of Mr. Rogers, together with five of the brothers of his future fatherland, all participated in and escaped from Fort Montgomery, when taken by the British. Three of them were so badly frozen that they were unable to attend to their duties for many months thereafter.

Before he was baptized Daniel became an inmate of the home of his grandmother, and under her kindly care he grew to boyhood and manhood. She was a remarkably bright, strong-minded woman, who directed his footsteps upon the right path. She dearly loved the lad and determined that he should not lack the facilities for obtaining an





*L. G. Rogers*



education. He early gave indications of possessing those qualities which are essential to success in any calling that requires an education, and became a diligent student. The academy at Montgomery, Orange county, served as a preparatory step for admission to college. He read law in the office of Hon. Hugh B. Bull, in Montgomery, and attended the National law school at Balston Spa. He was an industrious scholar and as a student displayed those qualities which in later years brought him success. Before completing his course at Balston Spa he attended court at a general term, held at Poughkeepsie, and passed an examination which admitted him to the bar July 7, 1851. He was graduated with high honor from the National law school at Balston Spa, August 5, 1851, and received the degree of bachelor of laws, the diploma being signed by Chancellor Walworth, the last of the chancellors of New York, and grandfather of United States Circuit Judge James G. Jenkins of Milwaukee.

Believing that the new western states afforded a broader field for the operations of a young man, Mr. Rogers came west in 1853 to select a place in which to begin his labors, and after due consideration, decided that Milwaukee would be his future home. However, he wisely concluded that in his new field he could better overcome such obstacles as beset his path were he aided and sustained by the love and companionship of her who had become master of his heart. Therefore he returned to New York and in May, 1855, was united in marriage to Miss Ellen Newkirk. Shortly thereafter, accompanied by his young bride, he again journeyed westward and established himself in Milwaukee, where they have since resided—a period of more than forty years—honored and respected by all with whom they have become associated.

In 1855 the system of jurisprudence then followed in Wisconsin was changed and the system in force in New York state was adopted. September 15, 1856, Mr. Rogers was admitted to practice at the Milwaukee bar, and from that time until the present has been an active member of the profession. His practice has been general in its nature, but equity and probate causes have taken much of his time and attention. His clientage has always been large and profitable, and some of



the very largest estates probated in Milwaukee have been settled by him.

He has been associated in practice with C. N. Carpenter, now of Brodhead, and with Judge D. H. Johnson and Thomas Hover, the latter now deceased, but during the past fifteen years his partner has been Charles D. Mann, and the business has been conducted under the name of Rogers & Mann. They have conducted much litigation of importance growing out of real estate transactions and probate matters.

Politically, Mr. Rogers was originally a "Henry Clay whig," but since the organization of the republican party has been a zealous and ardent advocate of the principles of that party. He is in no sense a politician, having no desire for political position of any kind, but during his younger years he served as a member of the board of counselors and later as a member of the board of aldermen, representing the seventh ward in the city of Milwaukee in those bodies. His name was frequently mentioned in connection with the nomination of his party for the mayoralty, but he invariably declined to become a candidate. During the war of the rebellion he displayed principles of the highest patriotism. From his ancestors, who shouldered muskets to enable us to found a republic, he inherited that sacred fire which caused the youth of the land to respond to our martyr President's call to save that republic from dissolution. He tendered his services to his country, but owing to a physical defect (he having broken his leg some years previously) was rejected. Being determined to aid in the struggle, even though he himself was disqualified, he paid an able-bodied man to enlist in the army as a volunteer recruit for him and proceed to the front. This generous, patriotic act was recognized by a testimonial from the war department.

Mr. Rogers' family, in addition to his wife, previously mentioned, consists of three sons and two daughters, D. G., Jr.; Mary, Henry, Charles and Blanche. He is domestic in his tastes and habits, is a member of no clubs or societies, and finds his greatest pleasure and truest happiness within the circle of his fireside, surrounded by his family. He has invested largely in Milwaukee real estate and has laid out and platted five large additions to Milwaukee. His business sagacity and careful habits have placed him far above want, and in the declining







Truly  
Chas. D. Hawley



years of his life he can with pleasure look backward over the past half century with the knowledge that he has acted well his part in life, and left the imprint of his character and individuality upon the city of his adoption.

#### HOWARD MORRIS.

Mr. Morris was born in Madison, Wisconsin, on the 6th of October, 1856; was graduated from the classical department of the university of Wisconsin in 1877 and from the university law school in 1879. He studied law in the offices of Sloan, Stevens & Morris and Burr W. Jones and commenced the practice of his profession in Milwaukee on the 1st of July, 1879. In May, 1880, Mr. Morris was employed in the law department of the Wisconsin Central system of railways, and in 1890 became general counsel of that system and of the Colby group of mines. In 1893 he was appointed one of the receivers of the railroad and in 1894 he also became receiver of the Penoque and Gogebic consolidated (Colby) mines.

On the 4th of October, 1886, Mr. Morris was married to Miss Julia A. Robertson, of St. Paul, Minnesota.

#### WILLIAM D. VAN DYKE.

W. D. Van Dyke, second son of John H. and Mary Douglass Van Dyke, was born in Milwaukee August 15, 1856. He was educated at Markham's academy and Princeton college. After graduation from the latter institution he began the study of law under the direction of his father. He began practice in partnership with his brother, George D. Van Dyke, under the name of Van Dyke & Van Dyke. In 1895 William E. Carter joined Van Dyke & Van Dyke, and the business has since then continued as Van Dyke & Van Dyke & Carter. Mr. Van Dyke has devoted his energies to general commercial, corporation and admiralty practice, but has of late years spent much time with great success in litigation regarding questions involved in the law of insurance.

#### CHARLES QUARLES.

Charles Quarles, of the well-known Milwaukee firm Quarles, Spence & Quarles, was born in Southport (now Kenosha), Wisconsin, on the

13th of February, 1846. He is of English descent, the members of the American branch on the paternal side being among the early settlers of New Hampshire. Massachusetts and central New York were the homes of his maternal ancestors, and both branches of the family embrace not a few heroes of the revolution, as well as patriots of the early colonial times.

Joseph V. Quarles, the father of our subject, came to Wisconsin in 1838 and, settling at Southport, in partnership with Henry Mitchell, built and operated a wagon factory, subsequently known as the Bain wagon works. The hard times of 1857 bore so heavily upon him, however, that he was obliged to sacrifice his interest in the enterprise. His death occurred in 1874.

Caroline Bullen, as she was known before marriage, the mother of Charles Quarles, was the daughter of General John Bullen, who was also one of the early and prominent citizens of Kenosha.

Mr. Quarles spent his boyhood in his native place, attending the public schools and the high school, graduating from the latter institution in 1863. He afterward entered the Michigan state university, but left during his senior year, in December, 1867. In 1868 the university gave him the degree of A. B. as of 1868. In the spring of 1869 he went to Chicago and secured a position with the Home Insurance company of New York, remaining about three years, or until the spring of 1872. The succeeding two years were spent in southwest Kansas and the Indian Territory. He returned to Kenosha in 1874 and began the study of law with the firm of Head & Quarles.

Mr. Quarles was admitted to the bar in April, 1875, and began practice at once, removing to Milwaukee in the spring of 1888. At first he became associated with the firm of Quarles, Spence & Dyer, and subsequently joined that of Quarles, Spence & Quarles. His prominence has been chiefly gained in his masterly conduct of cases of chancery and corporation law. Among the most important was that of *Hinckley vs. Pfister*, growing out of street railway litigation; and the motion to dissolve the injunction in the case of *Arthur vs. Oakes*, an outcome of the Northern Pacific strike, which was argued before Judge Jenkins.

The secret of Mr. Quarles' unusual success in these fields of practice consists of his untiring industry and the logical qualities of his mind. He never attempts to be ornate, but keeps the point at issue ever in mind and before the minds of judge and jury. A republican in politics, he has never sought office, although well qualified to adorn any position. In 1897, however, he was induced to become a member of the school board, of which he was chosen president, an unusual compliment to an untried representative. He has also served one term as a member of the state board of examiners for the admission of persons to the bar.

Mr. Quarles is identified with the leading social organizations of Milwaukee, such as the Milwaukee, the Deutscher, the Country and the Yacht clubs. He is also prominent in the work of the Wisconsin state humane society.

In November, 1881, he was married to Emma W. Thiers, of Kenosha. They have four children—Louis, Charles B., Henry C. and Ethel.

#### WILSON GRAHAM.

Wallace Wilson Graham, the father of the present Milwaukee bar, began practice in the territorial courts of Wisconsin before 1840. He was born in Cargycroy, in the county of Down or Armagh, on the 16th of September, 1815, and came with his parents to the United States by way of Quebec in 1818, settling at Ashtabula, Ohio, where he resided until admitted to the bar, on the 25th of August, 1837. After coming to Milwaukee he practiced alone until 1840, when he formed a partnership with Levi Blossom. From 1856 to 1864 he was associated with D. A. J. Upham, under the firm name of Upham & Graham. Later the partnership of Graham & Koeffler was organized, but since 1885 Mr. Graham has practiced alone.

#### GERRY W. HAZELTON.

Gerry W. Hazelton was born at Chester, New Hampshire, in 1829; was a student in Pinkerton academy, at Derry, and received instruction from a private tutor. In 1848 he went to Amsterdam, New York, and began the study of the law, at the same time pursuing his classical



studies; in 1852 was admitted to the bar, and practiced in New York until 1856, when he came to Wisconsin and located at Columbus, Columbia county.

In 1860 Mr. Hazelton was elected state senator; in 1864 was chosen district attorney; in March, 1866, was appointed collector of internal revenue for the second collection district, which office he held but a short time because he was not in sympathy with the policy of President Johnson; in 1869 became United States attorney for Wisconsin and served until January 1, 1871, when he resigned because of having been chosen a member of Congress in November preceding, to which office he was re-elected. During his four years' service in Congress Mr. Hazelton was active in guarding the interests of his constituents and in advocating such measures as he was specially interested in. He was an influential member of the national house. Soon after the close of his second term he was appointed United States attorney for the eastern district of Wisconsin, and in August, 1875, removed to Milwaukee and entered upon the duties of that office; he has since resided there and continued in active practice.

#### JOSEPH V. QUARLES.

Joseph V. Quarles was born in the village of Southport, now Kenosha, Wisconsin, December 16, 1843. His father, Joseph V. Quarles, Sr., was born in New Hampshire, and his mother, Caroline B., was a native of New York. They were among the early settlers of Wisconsin and were married at Southport. Their ancestors were prominent during the revolutionary war. Our subject attended the schools of his native town and was graduated from the high school of Kenosha at the age of seventeen. His father was one of the founders of the factory now carried on by the Bain Wagon company of Kenosha. The financial panic of 1857 forced this previously prosperous business to suspend operations and the father was left with scant means to assist his sons in their college aspirations. Young Joseph displayed that unfaltering courage and determination which has been so great a factor in his remarkable career. Teaching school in Kenosha, doing odd literary work, and finally, borrowing money from well-to-do relatives, he



Yours Truly  
J. V. Zucarelli





entered the university of Michigan in 1862. His record at college reveals the mental abilities which gave so much promise during boyhood. He was elected president of the freshman class and delivered the oration on class day.

The war breaking out at this time, he left college and enlisted in the thirty-ninth regiment, Wisconsin volunteer infantry, and was appointed first lieutenant of company C. Mustered out at the expiration of his term of enlistment, he returned to college and was graduated with the degree of A. B., and was chosen to deliver one of the graduating orations. Having but limited funds, he attended the law department of Michigan university for one year only. Returning to his home he entered the law office of Mr. O. S. Head, one of the oldest practitioners of the state. Mr. Quarles was admitted to the bar in April, 1868, before Judge William P. Lyon, of the circuit court of Kenosha, and at once formed a partnership with his distinguished preceptor under the firm name of Head & Quarles.

Mr. Head, advanced in years and possessed of a fortune, declined the more active duties of the firm, and Mr. Quarles was called into the higher courts, and had to oppose the older and leading attorneys of the state. During his association with Mr. Head, which lasted until that gentleman's death in 1875, Mr. Quarles was district attorney of Kenosha county for six years. As a young man he enjoyed the fullest respect and confidence of the people and was elected mayor of the city in 1876, but declined a renomination. He was president of the board of education in 1877 and 1878; member of the assembly in 1879, and represented Kenosha and Walworth counties in the state senate in 1880 and 1881. While a member of the senate he rose to a position of distinction and influence in that body, and served on the judiciary and other important committees.

In the senatorial contest of 1881 the excitement attending the election of a successor to Angus Cameron in the United States senate ran high, and without solicitation the friends of Mr. Quarles tendered him a complimentary vote, which assumed such proportions that it was with much effort that he prevented what would have been a most material compliment. Hard work and unceasing devotion to his profession

compelled Mr. Quarles to retire from active public life, and his physician enjoined rest and a change of scene.

Leaving Kenosha he went to Racine, Wisconsin, and formed a partnership with Mr. John B. Winslow, the firm being dissolved on the elevation of Mr. Winslow to the bench of the first judicial circuit. A year later Mr. T. W. Spence, of Fond du Lac, removed to Racine, and became associated with Mr. Quarles under the firm name of Quarles & Spence, which on the admission of a son of Judge Dyer was changed to Quarles, Spence & Dyer. In 1888 the firm moved to Milwaukee and began its very remarkable career under the name of Quarles, Spence & Quarles, a younger and able brother of our subject becoming the junior member of the firm.

As an advocate Mr. Quarles is especially prominent, having been connected with some of the most noted cases in Wisconsin. In the memorable "Charley Ford horse case," with Senator Doolittle and other eminent lawyers opposing him, he obtained judgment for his client for several thousand dollars, which was afterward affirmed by the supreme court. Retained by the state to assist in the prosecution of the Hurley bank robbery case, which attracted such widespread attention, owing to the large amount of money involved and the great complexity of the attending circumstances, Mr. Quarles established his reputation as a forensic lawyer of great ability, and convicted Leonard Perrin of receiving the stolen money from his adopted son and confederate. This conviction created unusual comment, owing to the prominence of Banker Perrin, the purely circumstantial character of the evidence and the intimidating methods of the defendant's attorneys, who had been invincible in their stronghold. The Horan poisoning case furnished another illustration of his skill and industry. Although popular opinion had set strongly against her, he cleared this young woman of a most serious charge. Mr. Quarles argued the Russell murder case before the supreme court and succeeded in obtaining an acquittal upon technical grounds. He successfully conducted the La Crosse park case, and obtained a verdict in favor of his client for possession of one of the principal parks in the city of La Crosse. He was retained by the state in

the prosecution of the Mead murder case, and participated in the celebrated "treasury cases."

Mr. Quarles possesses in an eminent degree all those qualities which command an audience, enlist a court and move a jury. His presentation of a case shows careful and original research and bears the impress of a logical and well-trained mind. As a cross-examiner, he displays wonderful adroitness; quick to detect the weak spots in adverse testimony, he marks out a plan of attack which seldom fails to afford him a decided advantage in the preliminary skirmish. As an orator of unusual ability and education, his address to the jury and court is eloquent, earnest and forcible, and from his great resources he draws at will, using his gifts with rare skill. Courteous and considerate to all, his language and manners have the stamp of the true gentleman, and obtain for him the respect and friendship of all classes. He has but little time to devote to politics, but as a republican has made campaign speeches in behalf of the party for the last twenty years. He is a member of the Grand Army of the Republic and of the military order of the Loyal Legion.

He married Miss Carrie A. Saunders, an accomplished lady of Chicago, in 1868, and has three promising sons. Essentially literary in tastes and habits, Mr. Quarles still pursues his readings and studies as a source of recreation, and is often called upon to deliver addresses. Still in the prime of life, and in the light of a past and honorable career, we may predict possibilities in the life of this esteemed citizen that will be limited only by his own ambitions.

#### GEORGE DOUGLASS VAN DYKE,

the eldest son of John H. Van Dyke, was born in Milwaukee on the 31st of October, 1853. Educated at Markham's, now the Milwaukee academy, he took a regular course at Princeton college, from which he graduated in 1873. He commenced his legal studies in the office of Emmons & Van Dyke and, under his father's careful training, was admitted to the bar in November, 1875. Under these auspices he commenced practice and subsequently formed a partnership with his brother, W. D. Van Dyke. The firm was known as Van Dyke & Van



Dyke, and so continued until about 1895, when William E. Carter, formerly of Platteville, was associated with the firm, the firm name being changed to Van Dyke & Van Dyke & Carter, as it is now. Their business is of a general nature, although it often runs into the specialties of corporation and admiralty law.

Mr. Van Dyke has been identified with the iron mining interests. He is now interested in the Pewabic company, being its president. He was one of the organizers of the Menominee Mining company and secretary and treasurer of that corporation, as well as of the Chapin Mining company. He is a director of the National Exchange bank of Milwaukee and has been associated with other financial institutions.

He was married in 1878 to Louise Lawrence. They have three children—Lawrence, Douglass and Louise.

#### CHARLES L. AARONS.

Charles Lehman Aarons is a native of New York city, the date of his birth being August 18, 1872. His parents, Lehman Aarons and Gusta (Marks) Aarons, were born in western Germany; they arrived in New York on the Fourth of July, 1869, carrying with them a few personal effects and \$50 in money—the extent, at that time, of their worldly possessions. The year succeeding the birth of their son Charles, they removed to Milwaukee, where they have since lived, and where the father gradually established himself as a prosperous wholesale clothing merchant.

Lehman Aarons, the father of our subject, was a strong man in every sense of the word. He never knew the meaning of “boyhood,” his parents dying when he was only thirteen years of age, leaving upon his youthful shoulders the sole support of a family of six. The maternal grandparents are still hale and hearty, at the age of eighty. They have never left the fatherland.

Charles L. Aarons, the subject of our sketch, is to all intents and purposes a Milwaukeean. From infancy he was brought up in the Cream City and laid the foundation of his education in her public and high schools. Three years of his school life were spent in Chicago,

where he attended and was graduated from the Brown (grammar) school of that city, being honored with the so-called Foster medal for excellence in scholarship. He also began his high school course in Chicago, but upon removing to Milwaukee again he graduated from the Milwaukee high school in 1890. For three years he attended the collegiate department of the Wisconsin state university, graduating from the law school of that institution in June, 1895.

Immediately after graduation he entered the office of Felker, Goldberg & Felker, his principal occupation being at first the preparation of briefs. He remained with that firm as an employe from July, 1895, to January, 1897, when he became the junior member. During six months of this period he had ably performed the monotonous duties connected with "briefing," but was then graduated to the more responsible post of trial lawyer. In both positions he showed his mettle. His first appearance before the state supreme court was in the case of Auerbach vs. Marks, in December, 1896.

In September, 1897, he retired from the firm of Felkers, Goldberg & Aarons, and has since practiced alone. For one who has but just entered upon his career, Mr. Aarons has been retained in much important litigation. Of the noteworthy cases may be mentioned *Manasse vs. Miller Brewing company* and *Lederer vs. Rosenthal*, in the state supreme court.

Mr. Aarons is the author of an article published in the September number of the *Central Law Journal* on punctuation—how considered in the law—which is attracting considerable attention among the members of the legal profession for its thoroughness.

Mr. Aarons is a republican in political belief. He is a member of the Masonic order, having served as secretary and junior deacon of Harmony lodge. He is an advocate of sociability, both in private and in club life, and while in Madison was president of the *Columbian society*, and in Milwaukee he has been especially prominent in the affairs of the *Forum club*, the members of which are young attorneys of Milwaukee who meet annually for debate. Mr. Aarons had the honor of being one of the debating team which won in the contest with the *Madison club*.

## VOLKERT W. SEELY.

Volkert W. Seely, son of St. Paul and Maranda Millard Seely, was born in Morris, Otsego county, New York, December 10, 1843. His father, although a manufacturer, was active in many public affairs and of even more than local prominence. During the term of Governor Bouck he took a commanding interest in the state militia, being honored with the commission of colonel. His ancestors were natives of New England, his father, Obadiah Seely, being born in Massachusetts in the year 1800. Mr. Seely (senior) came to Wisconsin in 1870 and settled in Jefferson county, being for many years a member of its board of supervisors.

The son, Volkert W. Seely, preceded his father to the state by several years. In 1861, the year which marked his coming to Wisconsin, he was in his nineteenth year and had already received an academic education. He first located at Lake Mills, teaching school, studying law and shorthand and otherwise evincing the qualities which were to bring him future success—industry, faithfulness and ability. During the period of his teaching he was principal of a school at Oconomowoc and superintendent of schools at Fond du Lac.

At the latter place, in the offices of Gen. E. S. Bragg, G. T. Thorn and Judge Mayhan, he commenced the study of his profession and was admitted to the bar in 1869. Alone at the beginning of his career, he afterward formed a partnership with George H. Francis, which continued for two years. For some time thereafter he formed no business association.

While living in Fond du Lac Mr. Seely had so perfected himself in shorthand—and it is said that he was the first professional stenographer in Wisconsin—as to receive the appointment of official reporter for the Fond du Lac circuit. His services were also in demand by the newspapers, not only because of his skill as a reporter but also owing to his enterprise as a newspaper representative. Upon one occasion an important secret political convention was being held in the state capitol and Mr. Seely had been delegated by certain Chicago and Milwaukee papers to report the proceedings. It was an especially choice bit for



the newspapers, since Matt. Carpenter was to be among the speakers. The convention was held behind "closed doors," but the basement of the state house offered vantage ground for Mr. Seely's reportorial talents and enterprise, and to the astonishment of the secret legislators their doings were published in full.

Mr. Seely's next change of location was from Watertown to Grand Haven, Michigan, where he remained for fourteen years, becoming one of its foremost citizens. Among the noted law cases in which he engaged was that which involved many intricate legal points in a contest between the city and private water works. The litigation extended through the state and federal courts for five years, and Mr. Seely's victory was complete. He was also city attorney for several years. Five years of the period during which he was a citizen of Grand Haven he served as director of the school board, and received other marks of public esteem.

In 1888, after having lost all his property by fire, Mr. Seely removed to Milwaukee, where he has since been engaged in practice. There he has also been successful, his record in criminal cases having been most noteworthy. His defense of Dr. Walter B. Kempster, Milwaukee's health commissioner, in the impeachment proceedings undertaken against him by the city, was ably conducted.

From 1892 to 1894 he was assistant city attorney of the city of Milwaukee, having been appointed to the office by Col. Conrad Krez, who was city attorney. It was during this time that he was prominently before the public and bar of Milwaukee, he having had full charge of all the city litigation at that time, and was very successful.

Politically Mr. Seely is a democrat. He is a Knight Templar, a member of Ivanhoe commandery, No. 24, Milwaukee. In 1897 he was high priest of Kilbourne chapter, No. 1.

Mr. Seely's first wife was Ellen M. Waite, whom he married at Watertown and by whom he had two children—J. P. and Mable D. His wife died in 1865, and he was married a second time to Amra B. Squier, at Grand Haven. One child, Miranda, has been born to them. His present wife was the daughter of Captain Squier, a sea and lake captain, as well as a contractor and ship builder.

## PETER DOYLE.

Peter Doyle was born at Myshall, county of Carlow, Ireland, December 8, 1844; came to Wisconsin in 1850, his father settling at Franklin, Milwaukee county; was liberally educated; taught school in Milwaukee for a time and studied law in the office of Butler & Cottrill. Removed to Prairie du Chien in 1865 and engaged in railway operations; in 1873 was elected to the assembly as a democrat from Crawford county; was elected secretary of state in 1873 and re-elected in 1875. His official record is most excellent. On retiring from office he traveled extensively in Great Britain and on the continent, and on returning to this country entered Yale college for the purpose of reviewing his legal studies preparatory to entering upon the practice of the law. At the close of a year's study he received the degree of bachelor of laws, his standing being third among thirty-one who were awarded that degree. Mr. Doyle has been practicing law in Milwaukee some years.

## JAMES BOYNTON ERWIN.

James Boynton Erwin was born in 1846 in Bethany, Genesee county, New York. His father was a thrifty and prosperous farmer and owned a large fruit and grain farm near the village of Bethany. When a young man his father was a prominent contractor and builder in his part of the state and erected many public buildings, among which are the Cary collegiate seminary, Wyoming academy and Genesee county asylum, upon the corner stones of which his name appears as builder. He was a strong abolitionist and republican and was often called upon to speak on public questions of interest. At the dedication of the Wyoming academy, which he built, he was orator of the occasion and received many congratulations and flattering words of commendation. This led to a proposition from one of the leading lawyers of the county, who urged him to abandon his vocation as a contractor and builder and take up the profession of law, for which he had a passionate fondness, but circumstances did not favor his doing so, and he finally chose the more retired life of farmer. Lydia Erwin, his wife, was the daughter of John

Boynton, of New Hampshire, who came to New York in an early day and was one of the first settlers in Genesee county.

James Boynton Erwin, the subject of this sketch, was the fourth of a family of six children. When a boy he was not a stranger to hard work, but did his full part with the others upon his father's farm. After taking the common school course, he attended the Bethany academy for several years, at which institution he received, from his preceptor, Prof. Scarf, the inspiration and encouragement which led to the selection of his chosen profession, his professor prophesying for him a successful career. At the academy he received the highest honors of his class and was made the valedictorian.

After leaving the academy, he, in 1867, became a student at law in the office of Senator George Bowen, one of the ablest lawyers in western New York, located at Batavia. Finding that the clerical work in a busy law office conflicted with his progress, he, in 1868, left the office of Mr. Bowen and became a student in Michigan university, at which institution, in addition to the study of law, he took a select course, including among other studies, English literature, history, logic, Latin, physics and social science. He graduated from the law department of the university in 1871, and has since devoted himself to the practice of his profession.

The first two years after his admission to the bar he practiced law at Batavia, New York, where he was associated with William Tyrell, one of the veteran lawyers of the state. Mr. Erwin is, and always has been, a staunch republican, and when at Batavia was appointed by the chairman of the county republican committee one of the speakers of the campaign, in which he took an active part. He was also a staunch temperance worker, and edited the temperance department of the "Progressive Batavian."

In the spring of 1874 he, with his brother, O. R. Erwin, came to Milwaukee for a business trip. Being pleased with the city, they both decided to make it their future home. O. R. Erwin entered into the coffee and spice business and later in the real estate business at Chicago, where he has been prosperous and honored by having the enterprising suburb "Erwin," of Chicago, named after him.

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When beginning his practice at Milwaukee Mr. Erwin was at first associated with the late J. V. V. Platto and C. K. Martin. After the second year C. K. Martin was elected to the office of district attorney. Then Mr. Erwin was appointed assistant and served in that capacity until the act creating the office was declared unconstitutional, when Mr. Erwin opened an office by himself, thereafter making a specialty in the practice of patent law. During the first five years of his practice in Milwaukee he was associated with the late A. McCallum of Washington, D. C., who was considered one of the ablest patent lawyers of the Washington bar, and to whom Mr. Erwin attributes much of his early success in his patent law practice. His relations with A. McCallum ceased upon the latter's appointment as solicitor of one of the leading railroad companies, when thereafter Mr. Erwin continued practice for several years alone.

In 1882 he became associated with the late Col. Geo. B. Goodwin, under the firm name of Erwin & Goodwin; after continuing with Mr. Goodwin for two years the copartnership was dissolved and Mr. Erwin entered into copartnership with C. T. Benedict, under the firm name of Erwin & Benedict. This firm continued in business for seven years, when it was dissolved, soon after which Mr. Erwin entered into copartnership with L. G. and L. C. Wheeler, under the present firm name of Erwin, Wheeler & Wheeler, which has been in existence now for the past five years.

While his chosen branch in the profession and his tastes have caused Mr. Erwin to devote his time largely to an office practice, he has, since engaging in the profession, conducted and acted as associate counsel in a large number of important cases in the United States courts in this and other states. Among his earlier clients, with whom were associated some interesting incidents, is the American Lubricator company, of Detroit. The business of said company, which for a time had been in a prosperous and thriving condition, was practically paralyzed by the adverse claim of a competing manufacturer to the monopoly of the invention, based upon the reissue of an old patent for a process. Mr. Erwin was employed as counsel in the matter, when he prepared an opinion clearly showing the invalidity of the reissue patent and the

fallacy of the claims of his client's competitor, thousands of copies of which opinion were sent broadcast throughout the country, having the effect to re-establish the business of the American Lubricator company upon a stronger basis than ever before, while said opinion also had the effect to largely increase Mr. Erwin's clientage in several different states where the same was circulated.

Mr. Erwin is specially fond of mechanics and finds no pleasanter pastime than the investigation of the latest developments in this line, and he has probably spent more to gratify his tastes in this direction than many others have in fast horses or steam yachts, and while he has not the time or the taste to personally attend to the commercial part of the business, he is the president of a company which has placed thousands of his inventions upon the market. His study and practical experience in mechanics have given him many advantages in the conduct of patent cases, which necessarily involve special training, and his standing in the department of law he has chosen is conceded by those who know him best to be second to none, as is evidenced by his success and clientage.

Mr. Erwin was married twenty years ago to Edith West, the third daughter of the late General F. H. West, for many years a resident of Milwaukee. Her father was for two terms the president of the chamber of commerce in Milwaukee, and was United States marshal during Cleveland's administration. Edith West was reared in Milwaukee and received her education at the Milwaukee female college. She has, for a number of years, been a member of the ladies' art and science class and the college endowment association, and is studious and progressive.

Mr. and Mrs. Erwin have, as the fruit of their marriage, two daughters, Clara Louise and Edith Josephine, and four sons, Orlando, Grant, Gilbert and Lawrence. They are members of the Grand Avenue Congregational church and interested in all benevolent enterprises.

#### THEODORE KRONSHAGE, JR.

Those who preceded the immediate ancestors of Theodore Kronshage were substantial Germans, who lived and died in the fatherland. Theodore and Pauline Hildebrand Kronshage were also natives of Ger-

many, but emigrated to the United States and settled at St. Louis, in 1866. During the succeeding year they removed to Milwaukee and afterward to Boscobel, Wisconsin, where Theodore, Jr., was born, November 6, 1869.

He passed through the common and high schools of his native village, and in 1891 graduated from the Wisconsin state university with the degree of B. A. In the meantime he had partially realized an early ambition to become a lawyer by a course of private study under John M. Olin, at Madison, while in 1892 the conclusion of his preliminary training in this direction was marked by his graduation from the university law department and his admission to the bar.

In September of that year he came to Milwaukee and, in partnership with W. D. Tarrant, opened an office for the practice of his profession. Their business is entirely of a civil character. One of the most noted cases was that fought in the United States supreme court which resulted in defeating the jury system of Utah. Mr. Kronshage's practice, in fact, extends from Boston to Salt Lake, cases now being pending in Denver, Detroit, Chicago, New York, Philadelphia and the other two cities mentioned.

#### CHARLES E. ESTABROOK.

Charles E. Estabrook, lawyer and legislator, was born near Platteville, Grant county, Wisconsin, on the 31st of October, 1847. His father, Edward Estabrook, was a farmer and a native of Illinois, migrating to Grant county in 1836 when there were few settlers in southwestern Wisconsin. His mother, formerly Margaret Mitchell, was born in Clinton county, New York. The father was a whig of prominence, his party sending him to the assembly in 1854. He removed to Iowa in 1868, his wife having died in Platteville, May 26, 1863.

In early life the subject of this sketch attended country schools in winter time and worked on the farm during the summer. When the civil war broke out it was with difficulty that he could be restrained from offering his services to the country, although he was then but fourteen years of age. In 1864, still under seventeen, he did enlist, joining company B, forty-third Wisconsin volunteer infantry, and serving until the



close of the war. Being mustered out of the service in July, 1865, he returned to Platteville to continue his studies.

After taking a course in the normal school, he taught in Platteville, Belmont and Manitowoc, being for one year principal of the first ward public school in the last named city. In the mean time he had been pursuing his legal studies under the direction of William E. Carter, of Platteville, and J. D. Markham, of Manitowoc, and in January, 1874, was there admitted to the bar and began the practice of his second profession.

At first Mr. Estabrook had no partners, but later he formed professional connections which resulted in the firm of Estabrook & Walker and Estabrook, Walker & Baensch.

In April, 1874, a few months after commencing practice, Mr. Estabrook was elected city attorney of Manitowoc, holding that office until December, 1880, and then resigning because he had been chosen to a seat in the assembly. During this period he became the author of much valuable legislation—such as the law providing for a state board of examiners for admission to the bar, which has had the effect of materially elevating the standard of legal qualifications and whose provisions have been substantially copied into the statutes of Minnesota, Michigan and New York, and the law providing for the organization of farmers' institutes. This is the common school of agriculture, supplementing the work of the experimental station and the other agencies provided by the state for agricultural education. By this means Wisconsin has become known throughout the world along this line of effort.

As stated in "Men of Progress:" "It was largely through Mr. Estabrook's efforts that suit was begun in the supreme court to test the validity of the act of 1883 reapportioning the state into senate and assembly districts. In conjunction with A. J. Turner, he compiled the facts on which the suit was based, and by their persistence the case was carried through the courts, the act was overthrown and the right of the court to inquire into the validity of such legislation was fully established."

In 1886 Mr. Estabrook was elected attorney general of the state, being re-elected in 1888, holding the office from January 3, 1887, to

January 5, 1891. During a portion of this period he was professor of municipal corporations, juries and justice court procedure and sales, in the college of law of the state university. In June, 1893, he removed to Milwaukee, where he has since resided and practiced his profession.

Mr. Estabrook is an active and influential member of the republican party, having served as a delegate to many of its local and state conventions and as a member of the national convention which met at Chicago in 1884. Since he has become a resident of Milwaukee he has been active in educational work in the line of library organization and university extension. Naturally, also, he is interested in all that concerns the Grand Army of the Republic and is a member of Wolcott post, No. 1.

On September 7, 1876, at Manitowoc, Mr. Estabrook was married to Miss Jennie Hodges. They have four living children—Charles M., Francis H., George M. and Benjamin H. Two daughters, Margaret and Mary, died at Madison.

#### CHARLES F. FAWSETT.

Charles F. Fawsett, associated with the well-known firm of Winkler, Flanders, Smith, Bottum & Vilas, was born in Montgomery county, Maryland, March 13, 1866, his ancestry being Scotch-English. Harvey C. Fawsett, his father, a farmer of the Old Dominion, removed to Montgomery county, Maryland, in 1858 and there continued his vocation. He was for many years one of the most prominent farmers of the county, but has lately retired and is now living in Rockville, the county seat of Montgomery county. He was always an ardent democrat and still takes an active interest in the political and public affairs of the county. In 1862 he married Miss Marian E. Offutt, daughter of William H. Offutt, judge of the orphans court of Montgomery county, and otherwise a citizen of high standing and marked influence.

The subject of this sketch spent the earlier years of his youth upon his father's farm. After passing through the public schools he taught as principal in these institutions for three years and subsequently pursued the higher branches at Dickinson college (Carlisle, Pennsylvania)

and the Washington-Lee university, at Lexington, Va. He left the university to accept a position in the Baltimore custom house under the first administration of President Cleveland, in 1888. The appointment which he thus received was manifest clerk in the naval office of that place.

It was while fulfilling the duties of this position, in the fall of 1889, that Mr. Fawsett commenced the systematic study of his profession in the law school of the Maryland university, the lectures therein being all after business hours. In 1891 he was graduated at the head of his class, taking the regular three-year course in two years. He was made president of his class, and was awarded the university prize of \$100 for the best examination. About the time of his graduation he was promoted from the position of manifest clerk to that of assistant liquidating clerk at a salary of \$1,400 per year, which position he shortly afterward resigned to enter upon the practice of his profession.

In February, 1892, he opened an office in Baltimore, but, considering the west a larger and more promising field for the young lawyer than the east, he removed to Milwaukee in October of that year. On January 1, 1893, he formed a partnership with John F. Burke, under the firm name of Burke & Fawsett, continuing in this relation until August 1, when he entered the office of Winkler, Flanders, Smith, Bottum & Vilas, with which firm he has since been associated.

Mr. Fawsett's first case was a suit brought against the city of Baltimore for damages to goods caused by the overflow of an insufficient sewer. It was the first case of its kind that had been tried there, the local members of the profession generally entertaining the view that the city was not liable for damages on account of insufficient sewage capacity. Mr. Fawsett, however, gained his suit, which was the forerunner of a number of similar cases. Since coming to Milwaukee he has had a broad and varied experience in the practice of the law in all its branches, and by virtue of his association with the last named firm has participated in many cases of the first magnitude.

In politics Mr. Fawsett has always been a democrat. He is a Knight Templar and a member of Ivanhoe Commandery, Milwaukee. He is also identified with the Milwaukee, Deutscher and Country clubs.



## JOHN L. GILMORE.

John L., the son of John M. and Sophia Mash Gilmore, was born in Green Lake county, Wisconsin, December 26, 1860. His father and his paternal grandparents, Dewey and Rebecca, were natives of the Empire state, his mother being of Vermont birth. Mr. Gilmore's parents removed from New York state to Ohio, at that early day considered in the far west. Here they resided until about 1858, when they came to Wisconsin, and, as stated, two years thereafter was born the subject of this sketch. The father still lives on the farm upon which he settled forty years ago.

After attending district school in his native county, John L. entered Downer college, Fox Lake, and took a full course in that institution. He afterward studied law in the offices of F. Hamilton & Son, of Fox Lake, and Rufus B. Smith, of Madison, completing his legal studies at the state university. Graduating from its legal department in 1884, he was at once admitted to the bar and commenced the practice of his profession in Mr. Smith's office. Two years later, however, desiring a wider field for the exercise of his talents, he removed to Milwaukee.

Establishing himself in Milwaukee under the firm name of Toohey, Morse & Gilmore, several changes occurred during the succeeding ten years. First Mr. Toohey retired from the partnership and Morse & Gilmore conducted the business. From 1888 to 1895 the firm was Toohey, Doerfler & Gilmore, Mr. Doerfler withdrawing during the latter year. The practice of the firm has covered a wide range, embracing both civil and criminal cases in all the courts, and, although the firm has confined its practice to no specialty, the suits which it has undertaken have been almost uniformly successful. It is perhaps needless to add that the credit of this record is due in no small measure to the professional strength of Mr. Gilmore.

Although a republican in politics, he has given so much of that strength to his legal studies that he has not drifted into the current of office-seeking which sweeps along so many members of his profession.

Mr. Gilmore is a Mason and a Knight Templar, having filled all the chairs in the blue lodge.

#### WARREN DOWNES TARRANT.

The senior member of the firm of Tarrant, Kronshage, McGovern & Dielmann is a tower of strength in the partnership, both because of his natural ability as a lawyer and because of the industry, care and frankness displayed by him in the conduct of cases and in his dealings with clients.

Mr. Tarrant is of British ancestry, his father, George Tarrant, coming from his native England to this country when seven years of age. His mother's maiden name was Clara L. Runey, her father, in antebellum days, being a resident of Maryland. He, with most of his relatives, were slave owners, and some of them have retained their southern prejudices to the last.

Mr. Tarrant, the father of Warren D., was and is a leading merchant of Durand, being a pioneer of that city. He is owner of several creameries and president of the bank of Durand, doing business under the firm name of Geo. Tarrant & Sons, and managing his extensive interests at Durand, Tarrant and Eau Galle with energy and ability.

Warren D. Tarrant was born at Durand, December 10, 1867. In 1883 he graduated from the high school and from 1883-86 assisted his father in his business.

As a preliminary to his legal training he took a full course in modern classics at the university of Wisconsin, graduating in 1890. He then commenced the study of law under John Fraser, at Durand, and completed his legal course at the state university, from which he graduated in 1892. While pursuing his studies at Madison he also continued his practical work in the office of Messrs. Olin & Butler, so that when he was admitted to practice before the state supreme and the United States courts in June of that year few young men have been so well equipped for an active professional career.

Locating in Milwaukee September 1, 1892, Mr. Tarrant formed a partnership with Theodore Kronshage, Jr., which, under the firm name of Tarrant & Kronshage, continued until January, 1898. Since that

date two additional members have been received, making the firm Tarrant, Kronshage, McGovern & Dielmann. Mr. Tarrant's first year's experience in Milwaukee was not especially encouraging, but since then the business has grown until it is one of the largest in the city—an indication of its prosperity being the tasteful suite of offices maintained by the firm.

Numerous important cases have been carried through the courts in a masterly fashion, among others the following: The Notobac trade mark cases, including the \$100,000 libel suit which grew out of them; the Philbrook guardianship matter, involving the right of a guardian attorney to charge regular legal services for work performed; Beck & Pauli Lithographing company vs. Rockford Watch company; Indiana Springs company's "mud" cases, in Chicago, to restrain certain parties from using the name "Magnetic Mineral Mud," which had been adopted by the above named corporation, as well as other suits of a corporate and probate nature.

Mr. Tarrant has always been a steadfast republican, and an earnest advocate of municipal reform. He has never been a politician, however, and the only official position which he has held has been that of court commissioner for Pepin county, which he filled in 1889-91. He is a Mason and a member of the Knights of Pythias, as well as of the college fraternity, Delta Upsilon, and the law fraternity, Harlan chapter of Phi Delta Phi.

#### JOHN A. F. GROTH.

Mr. Groth was born near Greifenberg, Pommerania, Germany, on December 6, 1861. His father, Ludwig, was an economist and as an active member of the liberal party took a prominent part in German politics. He left Germany partly on account of political reasons, settling in Milwaukee in 1873, where he died nine years later, at the age of sixty-six. The surviving family consisted of the widow, Bertha Groth (nee Boeder), and the children—John, Paul, Mary and Ella. Paul J. F. Groth is in the general passenger department of the Chicago & North-Western railway, Chicago; Mary is the wife of W. H. Momsen, of Milwaukee, and Ella is unmarried.



Previous to the commencement of his legal studies, Mr. Groth's education was obtained in the elementary schools of his native land, in the Greifenberg gymnasium and the Milwaukee high school. He began the study of law in the office of Frank B. Van Valkenburgh, continuing it with John C. Ludwig and P. J. Somers. The death of his father retarded his progress in this direction for about six years, this period being passed by him in the auditing department of the Chicago, Milwaukee & St. Paul railway. However, he by no means discontinued his law studies, and he not only preserved the knowledge already acquired, but also pursued a course in philosophy, following the schools of Kant and Schopenhauer.

In the beginning of 1889 Mr. Groth resumed his law studies systematically in the office of C. A. Koeffler, Jr., and two years later was admitted to the bar at Madison, Wisconsin. He practiced independently until the spring of 1894, when he became a member of the firm of Elliott, Hickox & Groth, with which firm he was associated for three and a half years, since which time he has practiced alone. During his professional career he has been identified with much noteworthy litigation, among which may be instanced the Plankinton bank cases and the F. F. Day assignment.

In politics Mr. Groth has been an active republican and is an effective campaign orator. During the McKinley campaign he delivered some eighteen speeches throughout the state in both the English and German languages, addressing about ten thousand people. In the spring of 1898 he was, by a small margin, an unsuccessful candidate for the nomination of city attorney, notwithstanding which, he at once entered vigorously into the campaign and did most effective work for his party.

In religious belief Mr. Groth is a Lutheran. He is a student of literature as well as of the law, and is in sympathy with many benevolent societies, being directly affiliated with the National Union, the Royal Arcanum, the Knights of the Maccabees of the World, and the Germania.

On the 24th of January, 1893, he was married to Miss Augusta Winzen. They have one son, Jean Paul.

## ERNEST S. MOE.

Mr. Moe's mother, a native of Quebec, is of English descent. His father was born in Ohio and emigrated to Racine county, Wisconsin, at an early day, becoming a general merchant at Union Grove, where Ernest S. Moe was born on the 26th of August, 1860. After being educated in the district schools, or, at least, progressing as far as they would take him, he entered the high school, graduating therefrom when only thirteen years of age. For the succeeding four years he assisted his father in his store and then, entering the university of Wisconsin and taking the modern classical course, graduated with honors in 1883. During his collegiate course he was a leader both in athletic affairs, in the fraternities and in all oratorical contests. In short, at this early day, he was not only a thorough student but active in many movements outside of the study and the classroom.

After graduating from the university of Wisconsin Mr. Moe at once entered the law office of W. C. Williams. A year of hard study was so productive of results that in October, 1884, he was admitted to the bar, but remained with Mr. Williams for some time after he had entered upon his second term as district attorney. He was also in the office of Chapin, Dey & Friend for two years, establishing himself as an independent practitioner in 1888. In the meantime (1887) he had become the attorney for the Northwestern Collection Agency and soon afterward president of the company, as well as active manager. Besides acting in these capacities he is associated in legal partnership with Otto R. Hansen, or perhaps, more correctly, the firm is now not only engaged in general practice, but has the management of that agency's entire legal business. The partnership with Mr. Hansen was formed in 1896, the firm name being, for the two previous years, Moe & Cole.

Mr. Moe, as a republican, has taken quite an active part in local politics and made a fine record as assistant district attorney under W. C. Williams. He is still in touch with college life through his connection with the Psi Upsilon fraternity. He is also a member of the Knights of Pythias, Milwaukee lodge, No. 1, and is connected with the Royal League.

Mr. Moe's wife was, before marriage, Miss Isabella Williams, whose parents are natives of Wales. Her father, Mr. Lewis Williams, settled in Kenosha county sixty years ago and is one of the most prosperous farmers and stock raisers in southern Wisconsin. They have one child, Margaret.

Mr. Moe's remote ancestors were of French extraction. The family name is properly De Moe, the American branch originating in two brothers who emigrated from France about the middle of the eighteenth century and settled near Plattsburg, New York. From this historic point, when a boy of eight years, Edwin Moe, the grandfather of Ernest, witnessed from his father's house the battle of Lake Champlain. In fact, many of Mr. Moe's paternal ancestors were participants in both the wars of the revolution and of 1812. Representatives of the family removed from Plattsburg to Cayuga county, New York, where their descendants still reside. Edwin Moe, the immediate ancestor of our subject, emigrated from New York to Ohio at an early day and died only a few years ago, at the age of ninety years.

Mr. Moe's maternal ancestry is English. His maternal grandfather, James Mather, was born near Bolton, England, and is a member of the famous family which has gone into history because of its connection with New England rather than with the mother country. Emigrating to Canada about the year 1837, he determined to make the country of freer opportunities his home and came to the United States during the following year. Locating in Racine county, in 1840, he engaged in several lines of business. He cultivated land, kept a hotel, sold produce and otherwise made himself known as an industrious and practical resident.

Other branches of the family represented by Mr. Moe are the Cases, original pilgrims of the Mayflower, members of which eventually settled in Connecticut to assist in the founding of the commonwealth; also the Penningtons, a wealthy and influential family of Liverpool and vicinity, Dr. Thomas Pennington, a noted physician, being at one time mayor of the city. The Liverpool branch is only represented in England and its members are usually connected with the legal profession.



## COLWERT K. PIER.

Colwert K. Pier was the son of the first white man who settled at the location of the present city of Fond du Lac, Wisconsin; he was born June 7, 1841, and was the first white child born in Fond du Lac. Until he was sixteen he helped on his father's farm; after attaining that age he entered Lombard university at Galesburg, Illinois; after leaving there he began the study of law with Judge Robert Flint, of Fond du Lac; before he was prepared for admission to the bar the civil war broke out; at the age of twenty he enlisted as a private in company I, first Wisconsin, the first volunteer in his native city. At the expiration of his term of enlistment (three months) filial obligations required him to return home, which he did; he engaged in the prosecution of his law studies at the Albany law school and in law offices in Fond du Lac. The desire to further serve his country in the field led him to organize a company of which he was chosen captain; he proceeded along that line until he had organized nine companies; the commissioned officers of the regiment so organized chose him as its colonel. He was then twenty-three years of age. At the time this regiment was tendered the government did not need it; but soon another call for troops came; Mr. Pier was commissioned lieutenant colonel of the thirty-eighth Wisconsin and went to the front, joined Grant's forces and fought in the Wilderness and about Richmond. Mr. Pier became colonel. In August, 1865, he was mustered out, returned to his home, was admitted to the bar, became a member of the firm of Gillett, Conklin & Pier, which was reorganized as Gillett & Pier and then changed to Gillett, Pier & Bass. For a time Col. Pier practiced alone. In 1874 he gave up the general practice to take charge of other business interests and did not thereafter devote much time to the pursuit of professional business.

About 1888 Col. Pier removed to Milwaukee, where he resided until his death, which was caused by a stroke of apoplexy and occurred April 14, 1895. He was active in politics, Grand Army circles and in various business affairs. During the existence of the state soldiers' orphans' home he was, for a long time, one of its trustees and for a part of the time an officer of the board. It is worthy of note that Col.

Pier's family, though of the gentler sex, all take to the law. Mrs. Kate Pier, his widow, and their three daughters have been graduated from the college of law of the university of Wisconsin, have been admitted to the bar, and most of them have appeared before the supreme court.

#### KATE PIER.

Kate Pier, daughter of John and Mary Hamilton, was born June 22, 1845, in St. Albans, Vermont, removing with her parents to Fond du Lac, Wisconsin, at the age of eight years. She was educated in the public schools of that city, graduating from the high school in 1862. She taught in the public schools of Fond du Lac and in 1865 married Colwert K. Pier. Their children were five daughters, three of whom are living.

In 1871 her father died and Mrs. Pier assumed the management of his estate. Her success therein induced her to determine to enter the legal profession, and, with her eldest daughter, Kate H. Pier, who had recently graduated from the high school, entered the college of law in the university of Wisconsin. They were both graduated in 1887.

A year later the Pier family removed from Fond du Lac to Milwaukee, where Mrs. Pier at once opened a law office. Her three daughters have now all joined her in this office.

In 1891 Mrs. Pier was appointed circuit court commissioner, which office she still holds. While Mrs. Pier has occasionally appeared in various courts of record in the state and before the supreme court, yet the greater portion of her time has been and is occupied with general office business, her duties as court commissioner and the management of estates. The more active work has been attended to by the daughters.

#### KATE H. PIER.

Kate Hamilton Pier was born December 11, 1868, in Fond du Lac, Wisconsin, on the same farm on which her father had been born. Within a few months after finishing her public school course, in company with her mother, she entered the college of law in the university of Wisconsin. In 1887 both ladies received the degree of LL. B. from the university. Miss Pier entered at once upon the practice of law.

in Fond du Lac, in the office of her father and mother. She tried her first case in the Fond du Lac county court. Within a year the family removed to Milwaukee, where Miss Pier began her legal work in the office of the legal department of the Wisconsin Central railroad. Later she entered her mother's law office, where she has ever since remained. In 1891 she argued her first case before the supreme court, being the first woman attorney to argue a case before that body. In 1894 she argued a case before the United States circuit court of appeals of Chicago, being, also, the first woman attorney to appear in that court. In the same year she was admitted to practice in the supreme court of the United States.

#### CAROLINE H. PIER.

Caroline Hamilton Pier-Roemer was born at Fond du Lac, September 18, 1870. She was educated in the public schools of Fond du Lac, Madison and Milwaukee. After graduation at the high school she entered the college of law at the university of Wisconsin, receiving the degree of LL. B. therefrom in 1891. After this she studied elocution for a short time at the Northwestern university at Evanston, Illinois. She has been engaged in the active practice of the law in Milwaukee ever since. She was admitted to the bar of the supreme court of the United States in 1897. November 17, 1897, she married John H. Roemer, of the Milwaukee bar.

#### HARRIET H. PIER.

Harriet Hamilton Pier was born in Fond du Lac, April 26, 1872. She was educated in the public schools of Fond du Lac, Madison and Milwaukee. In company with her sister Caroline she entered the college of law at the university of Wisconsin, from which institution both girls received the degree of LL. B. in 1891. She has practiced with her mother and sisters in Milwaukee ever since. Much of Miss Harriet's time has been passed in northern Wisconsin, where she has tried some very important cases relating to real estate titles and proceedings of county officers, etc. Miss Harriet argued her first case before the supreme court of Wisconsin in 1896.



## EMMONS E. CHAPIN.

Emmons E. Chapin was reared on the old homestead farm of his parents, Deacon Orange and Fanny (Greene) Chapin, in the town of Aurelius, about four miles west from the city of Auburn, New York, on the old Genesee turnpike. His earliest recollections are of the races between the "regular" and "opposition" four-horse stage coaches when they struck the long level through the old farm, and these races could hardly have been less spirited than the chariot races of ancient history. The horses were driven by superb horsemen, and in passing the old home would be neck and neck on a "dead run" till out of sight on their way to Buffalo or on their way to Albany, the coaches being filled with passengers and the "boots" with baggage and mail. The people along the turnpike mourned when the coach and four gave way to the railroad train.

His father was of the fifth generation from the distinguished Deacon Samuel Chapin, of Chicopee, Massachusetts, who took the "freeman's oath" at Boston in 1642. His mother was the daughter of Levi Greene, a nephew of General Nathaniel Greene of revolutionary fame. Both of Mr. Chapin's grandfathers served in the revolutionary war, and his father was a soldier in the last war with Great Britain. His grandfather, Levi Greene, was in the battle of Bennington under General Stark and heard his heroic words: "Boys, we win this fight or Molly Stark sleeps a widow to-night." His grandfather Chapin was present at the surrender of General Burgoyne.

Mr. Chapin attended the public and private schools and, finally, the academy until he reached the age of sixteen years, when he began teaching school in his native town of Aurelius. Subsequently he taught the public schools at Montezuma, and when of age was chosen superintendent of schools of Aurelius, which position he held for a few months before starting for the great west. Whilst teaching and serving as superintendent of schools he pursued the study of law, obtaining his Blackstone, Kent and other elementary works from ex-Secretary of State Christopher Morgan, who then was the law partner of William H. Seward and a friend of the Chapin family. He landed at Kellogg &

Strong's dock in Milwaukee, October 1, 1854, and soon afterward visited different parts of the state looking for a place to locate, also writing a series of letters for the eastern papers. He finally located at Oconomowoc, where he remained until the spring of 1856, at which time, having married Emily Jane Blanchard, an old schoolmate, he removed to Columbus, where he lived and practiced law until he came to Milwaukee in 1880. Since that time he has resided in this city and continued the active practice of law.

Mr. Chapin has earned not only a local, but a state reputation as an upright, painstaking and successful lawyer, having the confidence of the courts and public generally. He has been engaged in many important suits and has accomplished much in settling disputed questions under the laws of the state. Probably the most important litigation in which he has been engaged was that in which he appeared as counsel for the general government and defended it against suits for damages on account of the improvement of the Fox and Wisconsin rivers, during Grover Cleveland's first administration. During the four years of service in this professional work Mr. Chapin disposed of one thousand one hundred and twenty-seven suits, involving claims against the government aggregating three million and sixty-eight thousand dollars, before the commissioners and courts. This amount of claims, by successful management, was reduced to about three hundred thousand dollars, and thus ended litigation which had been before the commissioners and courts ever since the passage of the act, March 3, 1875. Mr. Chapin may very justly take pride in his services to the United States in the final closing of this most mischievous and oppressive litigation.

In politics Mr. Chapin is a democrat and for a long time served as a member of the democratic state central committee. Though frequently nominated by his party for public office, he always declined to run, yet was ever ready with voice and pen "to uphold the eternal and everlasting principles of Jefferson democracy." At his old home in Columbus he did much to build up the city and its schools. He drafted and assisted in securing the passage by the legislature of the city charter of Columbus, in 1874, and contributed greatly to the organization of the city and its free high school. He was for a long time president of

the board of education in that city. June 23, 1896, Mr. Chapin was appointed by W. G. Rauschenberger, mayor of the city of Milwaukee, to the office of member of the city service commission for the term of four years, commencing the first Monday in July, 1896, and is still serving as such commissioner. This appointment was made while Mr. Chapin was absent at the seashore and without his knowledge.

In Masonic circles Mr. Chapin ranks high. He was one of the charter members of the Columbus lodge, No. 75, chartered in June, 1856, of which lodge he is now an honored member. He has been grand lodge trustee, deputy grand master, and for two years in succession, 1880-81 and 1881-82, grand master of the grand lodge of the state of Wisconsin, and the subsequent four years wrote the foreign correspondence for the grand lodge, reviewing the annual correspondence of the sixty-six grand lodges in correspondence with the grand lodge of Wisconsin. This work gave him a national reputation among Masons.

#### CORNELIUS K. MARTIN.

Cornelius K. Martin was born of James and Rebecca Martin, at Poughkeepsie, New York, April 16th, 1828, and died at Milwaukee, Wisconsin, October 23d, 1882. His youth was passed on a farm, but being very lame, as a result of hip disease when a child, he had more leisure for reading and study than in those days was usually enjoyed by a farm boy, so that he early acquired the bent that made him wring from the world at great expense of time and labor and resolute self-denial and discipline a college education and an admission to the bar. His academic course was carried on wholly by his own earnings, and so was a very long one, a year of college work following a year of saving for it by teaching in district schools, and his degree not coming to him till his twenty-sixth year. He married Olive Jane Elmore of Esopus, New York, immediately after graduation, and they then came to Wisconsin, where, first at Troy and after at Milwaukee, Mr. Martin taught school and studied law. He was admitted to the Milwaukee bar in July, 1857, and at that bar practiced without intermission until his last sickness in 1882. He was for eight successive years district at-



torney for Milwaukee county. His partnerships were few and of short duration.

His practice was of a general nature, but it is by his conduct of several important criminal cases that he is chiefly remembered.

He was always deeply interested in politics, and was a very ardent and active democrat till the last years of his life, when he became a republican. He was a frequent speaker at political meetings.

Mr. Martin was a man of sanguine temperament, of a large frame, and with his handsome head and figure, his full, strong and carefully trained voice, his simple, concise and well-ordered vocabulary, and his habit of logical, direct thought, he was a power at the bar or on the platform.

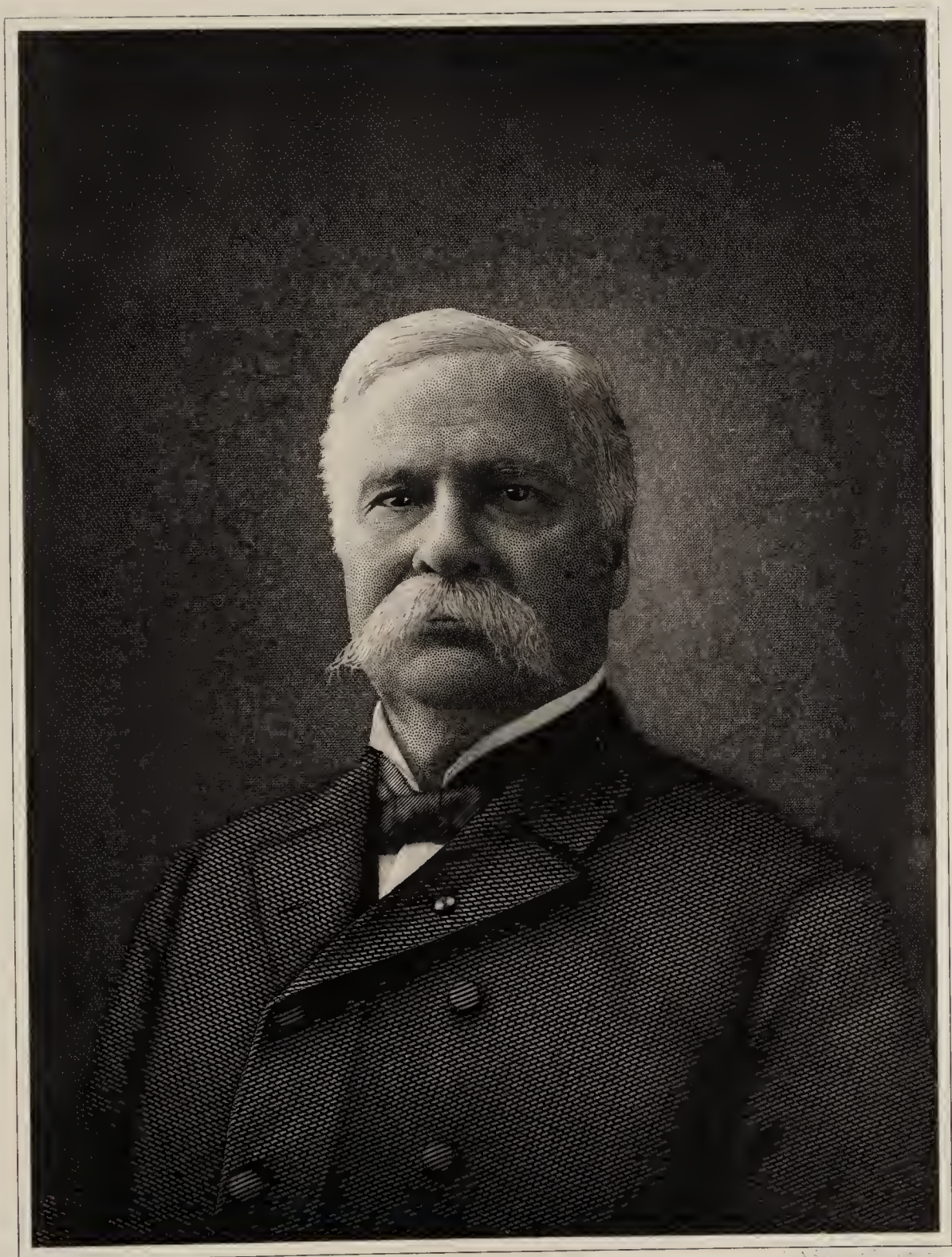
#### JOHN T. FISH.

John Tracy Fish was born in Lake Pleasant, Hamilton county, New York, November 8, 1835. He is a scion in the eighth generation of the old and respected Fish family of New England, whose founder, Thomas Fish,\* came from England before 1643 and became one of the earliest settlers of Rhode Island.

The parents of the subject of this sketch were Joseph Warren Fish and Submit (McCumber) Fish, the latter of Scotch ancestry. Mr. Fish's father was a farmer in good circumstances, a man of force and power, who possessed a natural "legal mind," which, had he become a

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\*The Genealogical Dictionary of Rhode Island devotes much interesting space to the progenitors of the Fish family. Thomas and Mary Fish, his wife, died respectively in 1687 and 1699, and to the first named, Thomas Fish, a grant of land was made in 1643, the date probably representing the time of the settlement in Rhode Island and being six years only after the banishment of Roger Williams. Thomas Fish was a member of the town council in 1674 and evidently a citizen of substance and consequence in his community. There appears a record telling how, in 1684, he deeded to his grandson, Preserved Fish, the homestead, comprising fifteen acres of land, upon which his son, Thomas, Jr., had lived and died, and by his will, dated 1687, it is shown that he left two sons and three daughters. The subject of this sketch, as indicated by the same genealogical records, is also a direct descendant of William and Mary Hall, of Portsmouth, R. I., the former of whom was admitted an inhabitant of Aquidneck on August 8, 1638. Their son, Zuriel, married Elizabeth Tripp, daughter of John and Mary (Paine) Tripp, the latter being a daughter of Anthony Paine, who was admitted an inhabitant of Portsmouth in 1638. In this way Mr. Fish traces indisputably his ancestry to those who were among the founders of Rhode Island and of New England.



STEIN Photographer

NEW YORK

*John D. Fish*

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member of the bar, would have placed him high in the profession. From him Mr. Fish has inherited most of those qualities that have made his career at the bar a continuation of successes.

Forced to work upon his father's farm until he was twenty years of age, Mr. Fish's early education was necessarily irregular and imperfect, one term in the Kingsborough academy being all the schooling which he was able to obtain beyond that which was afforded by the district schools. Yet when, in the fall of 1855, he settled at Lake Geneva, Wisconsin, where his brother had previously located, he was able to secure a position as a teacher, a testimonial at once to his diligence, his perseverance and his pluck. Then for a season he turned his hand to manual labor, with such good result that his circumstances warranted an important change in his condition of life, and on May 1, 1857, he was married to Julia Ann King, of Woodstock, Illinois. She was the youngest of six children. Two of her brothers became prominent physicians. She died in 1869, leaving an infant but thirteen days old. This child is now John King Fish, attorney, with Fish, Cary, Upham & Black. The other children are Frank Marson Fish, judge of the first Wisconsin circuit; Emory Warren Fish, holding a responsible position with J. I. Case Threshing Machine company, of Racine, Wisconsin, and Etta, now Mrs. Charles E. Tingley, of Boston, Massachusetts.

In the fall of 1857 Mr. Fish left Lake Geneva, Wisconsin, and settled in McHenry, Illinois. He bought a farm, with the full intention of making agriculture his life work. Fortunately for him, judging by after events, the season of 1858 proved so disastrous as to leave him, after he had paid his debts, almost penniless. Then once more his energy asserted itself, and while considering what he should next do he displayed his pluck and energy by supporting his family by chopping wood.

It was at this critical period in his life that his very good friend, L. C. Church, an attorney of Woodstock, estimating his abilities higher than he did himself, urged him to study law. Mr. Schumacher, an attorney of the same place, also gave him plenteous encouragement. Mr. Fish had free access to their libraries and, working with the utmost industry, frequently pursuing his studies far into the night, he was

prepared by July, 1859, to take a successful examination for admission to the bar before H. S. Winsor, Robert Harkness (then judge of the first circuit), and Mr. Kellogg, of Whitewater.

Mr. Fish began to practice his profession at Sharon, Walworth county, Wisconsin. Recognizing the fact that whatever he was to become depended only upon himself, and that hard, steady work and continual study were required to gain the mark of his ambition, he began a regular system of economizing his time, making every minute count to some advantage. Clients being few, to add to his pecuniary resources sums sufficient to support his family, he engaged in manual labor as a carpenter. His professional duties, however, were not neglected, and during this time he was employing all of his spare time in continuing his study of the law.

In August, 1861, he enlisted as a private in company C, thirteenth Wisconsin volunteer infantry, and when the organization was perfected was chosen its second lieutenant. In December he accompanied his command to Fort Leavenworth, Kansas, thence to Fort Scott and Lawrence, in the same state, and afterwards to Fort Riley. From the last named point he expected to be ordered to New Mexico with the expedition under General James Lane, but the project was abandoned and the regiment instead called to Lawrence and thence taken by boat to St. Louis and Columbus, Kentucky. In the fall of 1862 the young lieutenant was ordered to Forts Henry and Donelson, remaining at the latter place until just before the battle of Chickamauga, when he marched with his regiment to Stevenson, Alabama. On the evening of October 26, 1863, the regiment left Stevenson, Alabama, and went into winter quarters at Edgefield, on the Cumberland, opposite Nashville. During the winter the regiment left on a furlough for Wisconsin, where Lieutenant Fish remained for five weeks and then returned to Nashville. In April, 1864, the thirteenth regiment returned to Stevenson and from the 6th of June, for nearly three months, it was located at Claysville, Alabama. Late in August it was ordered to Huntsville, where it arrived on the 3d of September. In July, 1865, the thirteenth regiment, then a part of the third brigade, of the third division of the

fourth army corps, left for Texas, going into camp on the 16th of July.

Mustered out of service on December 26, 1865, as captain of his company, Mr. Fish returned to Sharon and in December of that year tried his first case in the circuit court. From that time on success has ever attended him. His cautious, deliberate methods gained for him the reputation of a safe counselor, and the confidence of his community was extended to him—a confidence which has always continued to be reposed in him throughout his long professional career. He was elected district attorney in 1868 and moved to Racine. In 1871 Mr. Fish became associated with Charles H. Lee, under the firm name of Fish & Lee. After seven years Mr. Lee retired from the firm to become special counsel for the J. I. Case Threshing Machine company. In 1878 Mr. Fish formed another partnership with J. E. Dodge, late assistant attorney general of the United States, and, with the exception of one year, during which Mr. Dodge was absent, this association was continued uninterruptedly for seven years. In May, 1884, his son, Frank M. Fish, became a third member of the firm, the style of which was Fish, Dodge & Fish. In October, 1885, Mr. Fish moved to Milwaukee to enter the firm of Jenkins, Winkler & Smith. While not restricting his practice to any single department, Mr. Fish, from an early period in his professional career, made a close study of corporation and railroad law, and when, in 1887, John W. Cary was promoted to the position of general counsel of the Chicago, Milwaukee & St. Paul Railroad company, he was induced to relinquish a flourishing general practice and accept the appointment of general solicitor of that company, one of the principal railroad corporations of America. Placed in full charge of all its extensive litigation, with headquarters in Chicago, he carried out the arduous and very responsible duties until February, 1894, when he resigned and returned to Milwaukee. There the firm of Fish & Cary, composed of John T. Fish and Alfred L. Cary, was formed, and Mr. Fish resumed general practice. But his ability as a railway attorney had been so positively demonstrated that he was soon placed in charge of the legal affairs of the Ashland division of the Chicago & Northwestern Railway company, and in 1897 assumed the management of the entire legal business of the company within the state of Wiscon-



sin. On the death of Jerome R. Brigham, one of the old and prominent lawyers of the city, during the early part of the year, the firm of Wells, Brigham & Upham was, in May, 1897, consolidated with that of Fish & Cary, forming the new firm of Fish, Cary, Upham & Black, which is unquestionably one of the most substantial and prosperous legal organizations in the northwest.

Mr. Fish was again married, on September 1, 1870, to Eliza Sampson, daughter of Rev. William H. Sampson, the first president of the Lawrence university, Appleton. They have two children—William S., now reading law, and Irving A., who is still attending school.

For more than thirty years Mr. Fish has been a distinguished figure at the Wisconsin bar, and during most of that period has ranked as one of its ablest and most successful members. His reputation as a lawyer has been won at a bar famous for the learning, skill and distinguished successes of many of its members and in open competition with some of the most brilliant and accomplished advocates of the present generation. This reputation is not based upon those superficial attributes which frequently bring notoriety and fortune to those possessing them, but on solid legal acquirements. In the opinion of many competent critics, Mr. Fish is probably without a superior in the special field to which he has of late years given his chief attention. So clear are his perceptions and so accurate his judgments that his conclusions are seldom overthrown. His mental processes are so unerring in their results that they have been described as "mathematical."

An old lawyer who has had an extensive acquaintance with the bar of Wisconsin for nearly half a century, and who, during the whole professional career of Mr. Fish, has known him intimately, speaks of him in the following terms: "During the past thirty years this state has had, and still has, many great lawyers practicing in its courts, but it is no disparagement to any of these to say that, in professional acquirements, in untiring industry, in soundness of judgment, in strict fidelity to duty and in professional success, Mr. Fish is the peer of any of them. He is, and long has been, one of the leaders of the bar, both in the state and federal courts. He never affects the ornamental graces of mere oratory, but he always goes into court fully equipped for the contest

before him. He excels in the somewhat rare ability of stating the facts of his case concisely and strongly, and his arguments are clear, logical and convincing—much the most important and valuable factors in successful forensic effort.

“Mr. Fish has been a prominent practitioner in the supreme court of this state for the last thirty years, and cases there argued by him are reported in numerous volumes of the Wisconsin reports. Many of these are cases involving large interests and most important legal principles, and his arguments have been potent in forming and establishing the jurisprudence of the state. He also possesses business ability of a high order, which has not only been an important element in his great professional success, but has enabled him to amass a handsome fortune without diverting him from the earnest practice of the law.

“Mr. Fish has never held office to any considerable extent, and has never sought office, but has devoted himself with singleness of purpose to his chosen calling, apparently quite indifferent to public position. Who can say that he erred therein? Yet those who know his eminent judicial qualities can but regret that he has always avoided judicial position, and, hence has not been called to the bench of the state. His name goes easily in the list of the names of the best and greatest lawyers of Wisconsin.

“Mr. Fish is a gentleman of high personal character. He is a model husband and father and a most genial and attractive companion. His home, in which his children and friends love to gather often, is an ideal one.”

#### HAROLD GREEN UNDERWOOD.

H. G. Underwood, an authority of wide repute on patent law, was born in Litchfield, Herkimer county, New York, on August 1, 1852. John DeLoss Underwood, his father, a well-known lawyer of Albany, New York, died in 1855.

The first definite records of the family date from 1106, when Guy Underwood figures as a judge and a royalist in the reign of Henry I. Upon him were bestowed the family arms, for valuable services rendered upon the battle field of Tenchebray during that year. The crest

bears the motto *Omnes Arbusta Juvant*—"We all delight in the under-wood." Early in the seventeenth century the progenitors of the American branch emigrated from Hertfordshire, England, and settled in Massachusetts, near Plymouth. This advance guard consisted of the two sons of Aquilla Underwood: John Underwood, who established himself in the Old Bay state, and James Underwood, who became a resident of Virginia. Thus were planted the northern and southern branches of the family in America.

The mother of Harold G. Underwood was known in maidenhood as Marcia Green. Her father, Rev. Beriah Green, a Congregational minister, was settled over various charges in Vermont, Connecticut, Ohio and New York. He was also professor of sacred literature in the Western Reserve college of Ohio, president of the Oneida institute at Whitestown, New York, and first president of the American Anti-Slavery society. Freeman Foote, his mother's grandfather, was a soldier of the revolution under Colonel Ethan Allen, being present with that God-fearing patriot at Fort Ticonderoga.

Our subject passed his boyhood in Whitestown and Utica, New York, attending their public schools and enjoying a training in the classics under the tuition of his grandfather, above mentioned. On account of ill health the boy was taken from school, and then followed a period of uncertainty as to whether he should make a specialty of mathematics or of the law, to each of which studies he was partial. From the age of sixteen until he was twenty he served as assistant actuary of the New England Mutual Life Insurance company, of Boston, in this capacity utilizing his mathematical talents. Finally, however, his love for the legal profession predominated and, removing to Washington, he began the study of the law at Columbian university. Perhaps the strongest influence brought to bear in the formation of this decision was the warm encouragement of his uncle, John C. Underwood, judge of the United States district court for the eastern district of Virginia. It was in his office that much of his early professional instruction was obtained. He was admitted to the bar at Washington in 1875, receiving the degree of LL. B. during June of that year.

In the meantime (1873), while engaged in his legal studies, Mr.









*Magnum of Western History*

*Jack Beres*



Underwood had accepted the position of examiner of patents in the United States patent office and continued in that position for six years after his admission to the bar. In 1878 he was the sole delegate of the United States to the first international patent congress held at Paris, and in March, 1881, he resigned his position in the patent office to commence the practice of his profession in Milwaukee, where his practice has been principally in the United States circuit court, as well as the United States circuit courts of appeal throughout the country and the United States supreme court at Washington.

Naturally Mr. Underwood had decided to adopt patent law as his specialty, as by experience and natural adaptability no one could be better qualified to succeed in the field. It is needless to say to those who have followed his career that results have fully justified his judgment and that his success has been earned by the exercise of talents and practical knowledge, plus untiring industry and persistent concentration of all his energies.

Mr. Underwood joined the Masonic order in 1873; is a Knight Templar, a thirty-second degree Scottish Rite Mason, and a member of the Mystic Shrine. He is vice president of the Wisconsin society of the Sons of the Revolution. He was married on June 20th, 1883, to Marie Lawson Scott, of Mendota, Illinois. Both he and his wife are members of St. Paul's Episcopal church. There are two children in the family, Walter Scott and Isabel.

#### NATHAN PERELES.

No citizen who has lived in Milwaukee for a long term of years and died there has enjoyed stronger traits of character, or been more sincerely mourned by all classes, than Nathan Pereles. He was cautious and yet generous in dealings with those whom he trusted. He had what has been called the "business instinct," and yet never was there a more tender hearted man. He was a splendid citizen and grateful to the country in which he had found opportunities for advancement, his patriotism finding vent not only in public spirit and public works, but in the education of his sons, who were early imbued with his national enthusiasm.



Nathan Pereles was born in the village of Sobotist, Neutra county, Hungary, on April 2, 1824. His decided educational tendencies, evinced at an early age, are accounted for by the fact that his parents, Herman and Judith Pereles, were teachers and, although remarkably intelligent, were poor in worldly goods. Their son was therefore obliged to enter business when only fifteen years of age, as a clerk in a wholesale indigo and seed house in the city of Prague, Bohemia. He had been taught by his parents, as far as lay in their power, and after he became thus employed attended evening school. In his twenty-first year he had reached the position of chief clerk in the business, and at this point it seemed that his progress was stayed.

In 1845, however, Mr. Pereles determined to better his prospects by emigrating to America. Although he came to New York with letters of recommendation to prominent capitalists and business men, he soon imbibed the independent spirit of the new land, albeit he was unable to speak its language. He therefore passed by these men of influence, engaged himself to a New Jersey farmer and, when not thus employed, gave his time to the mastering of the English tongue and the teaching of German and French to the young people of the neighborhood.

Two years thus spent in the east tended to fix the ambition in his mind to move still further toward the west of the United States. In 1847, accordingly, he located in Milwaukee, and, although his economy and industry had enabled him to accumulate a small capital, he had the good sense to first obtain employment before he commenced to investigate the situation with a view of independently establishing himself. In company with two friends of his youth, A. Neustadle and H. Scheftels, he finally opened a grocery store on Chestnut street, near Third. In 1849 the firm was dissolved, and for the succeeding five years he continued such a prosperous business alone that he was able to retire and devote a fair portion of his time to studies of the law, to which he had been partial for many years. The panic of 1857, however, found his name upon the notes of several friends who were unable to meet payments, and others upon whom he depended failed; so that with the fall of others his entire fortune was swept away.

This blow but aroused Mr. Pereles to redoubled energy and he continued the study of law with a definite and a serious purpose. For about a year he was in the office of George W. Chapman, being admitted to practice on September 11, 1857. Soon afterward the firm of Austin (afterward Judge R. N.) & Pereles was formed, which continued for nine years, when D. H. Johnson (now judge of the circuit court) was received into the partnership. The firm thus formed, Austin, Pereles & Johnson, was not dissolved until December, 1868. Failing eyesight, on the part of Mr. Pereles, caused by intense and unremitting toil, made this step necessary. Personal care and medical treatment, however, averted the threatened calamity of blindness, and in 1874, Mr. Pereles resumed business, taking James M., his son, into partnership. Two years thereafter Thomas J. Pereles, another son, who had recently been admitted to the bar, joined the firm, which then became known as Nath. Pereles & Sons.

Mr. Pereles' life experience and educational training, as well as his inclinations, peculiarly fitted him for the practice of probate, real estate and commercial law. He therefore refused all criminal cases, and it is doubtful if there has ever been a practitioner in the state who so thoroughly understood his specialty as he. Added to his remarkable knowledge were his absolute probity and reliability; so that whether he was managing large estates, or the small money matters of poor citizens, he possessed the complete confidence of his clients. What more can be said of a man than that those with whom he dealt had pure faith in both his ability and his honesty?

For many years he was prominently identified with such institutions as the Bank of Commerce and the Connecticut Mutual Life Insurance company. He was a Master Mason, member of the oldest Milwaukee lodge, and at the time of his death was one of the three surviving charter members of the oldest German Odd Fellows lodge in Wisconsin: Teutonia, No. 57, of Milwaukee.

Mr. Pereles' wife was formerly Miss Fannie Teweles, daughter of a Prague merchant, to whom he became engaged before coming to America. Three sons and one daughter survived them. B. F. Pereles, the eldest, is a retired merchant; James M. and Thomas J. are, as

stated, members of the law firm; their daughter, Julia E., died five years ago.

Mrs. Pereles was a helpmate to her husband in the truest sense of the word, not only faithful in every trial, but possessing the ability to render the most efficient assistance. She survived her husband thirteen years, her death occurring on March 31, 1892.

Mr. Pereles was a man of remarkable strength and vitality and for years accomplished an enormous amount of work.

A friend, in eulogy of Mr. Pereles, said: "Had he been a banker, he would have made a very successful one. He was very benevolent, of which trait the world knew little. His industry was something wonderful. He was never idle a moment, his vigorous constitution, coupled with his strictly temperate life, enabling him to perform an amount of labor that few professional men could endure, but which he performed with apparent ease. He was entitled to be ranked among the best citizens, one who by industry, economy and the practice of correct principles raised himself from poverty to affluence, from obscurity to prominence, and who has left a record for honesty, business integrity and usefulness to which his children may point with pride."

Another friend, in eulogizing him, said: "Nathan Pereles was one of God's noblest masterpieces, and at his birth nature stamped him with the seal of greatness, and upon him showered her very best gifts. She gave him great strength of body, and when she created the palace of his mind and furnished it in regal splendor, upon the throne she placed a brain of matchless power; she gave him love as boundless as the sea, loyalty to friends, good health, a cheerful disposition, tireless energy, rugged honesty, and modesty without timidity; she planted in his heart the love of liberty, the hatred of tyranny, of fraud, of sham; she gave him the art of reading human nature, the power to grapple with great problems and to solve them satisfactorily. All these were his, while yet he lay in the cradle, ere he recognized his mother's face, or knew the sound of her voice. It wanted but Time, with his magic wand, to draw them out, and the force of circumstances to bring them into action. With these qualities of head, heart and body, failure in life was impossible, and, superbly equipped as he was, he mounted the ladder







*J. F. M. Perels*

of success, and on the topmost heights he planted his flag. Success, however, did not make him vain, haughty and overbearing; he did not forget his humble origin, and never was ashamed of it. He had no room in his mind for foolish, parvenu pride, and it never found a lodgment in his heart; it was as out of place in his nature as the polar bear is in the tropics, and he was as easy of access to the day laborer as to the millionaire, being courteous to all and servile to none."

His death occurred, not because of disease but as the result of an accident. He was an eager and accomplished horseman, and while taking his usual morning exercise was thrown to the ground. The injury developed a tumor which, about a year after the accident, proved fatal, the date of his death being January 28, 1879.

#### JAMES MADISON PERELES.

James M. Pereles, present senior member of the law firm of Nath. Pereles & Sons, is a native of Milwaukee, having received his preliminary education in the Fourth Ward school and the German and English academy, of the Cream City. At the age of sixteen years, he took a course in the Spencerian Business college. For more than thirty years his father, Nathan Pereles, was one of the most respected and prominent citizens of Milwaukee, both in business and professional circles. While he lived his name stood in the community for absolute sincerity of purpose and honesty of character. He was an ideal father, and the retention of the firm name, "Nath. Pereles & Sons," after his death is a tribute to his memory, prompted by filial affection. This sentiment is shared by the other members of the firm, though not of his kin, Charles F. Hunter and Guy D. Goff, who believe that it is a synonym of strength, having been the trade mark of the firm since its establishment.

James M. Pereles was admitted into his father's law firm July 1, 1874, having lately graduated from the law department of the Wisconsin state university, being admitted to the bar on the 18th of the previous month. He has always stood well at the bar; his judgment in all matters connected with probate, commercial, corporation and real estate law being remarkably broad, clear and exact. He is, in fact, a worthy



successor to his father, both in the professional and the manly sense.

Having passed his life in Milwaukee, and received most of his education in her institutions, Mr. Pereles has naturally taken a deep and active interest in home education, and, with his brother, T. J. Pereles, is a liberal contributor to aid and keep such children, whose parents are unable of their own means to avail themselves of the benefits of the Milwaukee public schools. He was appointed school commissioner on March 27, 1893, to fill the unexpired term of his predecessor, who resigned, and on May 2, 1894, was elected president of the Milwaukee board of education. It was during the first year of his service that he inaugurated the campaign to abolish corporal punishment in the public schools. He introduced the resolution looking to that end on July 3, 1893. It was referred to the committee on rules, and recommended for passage, and although Mr. Pereles' object was not completely attained, the subsequent agitation resulted in restricting the punishing power to the principals of the schools. He also served most acceptably as trustee of the public museum and the public library.

Mr. Pereles was elected president of the Milwaukee public library on January 29, 1897, to fill the vacancy caused by the death of Dr. George Koeppen, late editor of the "Germania," of Milwaukee, and has been re-elected president and trustee for another term of four years on May 3, 1898.

Mr. Pereles was married on September 6, 1874, to Miss Jennie Weil of Merton, Waukesha county, this state. Their three children died in infancy.

Mr. Pereles is a Mason of high degree, being a member of Independent Lodge No. 80, Wisconsin Chapter No. 7, Ivanhoe Commandery, K. T., No. 24, Wisconsin Consistory, and is also a member of Tripoli Temple, A. A. O. N. M. S.

#### THOMAS JEFFERSON PERELES.

Thomas J. Pereles, of the firm of Nath. Pereles & Sons, was born in Milwaukee and educated in its district and high schools. Graduating from the law department of the Wisconsin state university in 1876, he was admitted to the bar on June 20th, of that year, and on the first of



*Mr. Jefferson Perle,*





the succeeding month associated himself with his father and brother, James M., to form the partnership of Nath. Pereles & Sons. The founder and father died in January, 1870, but the old style of the firm is retained, and the business which he established is not only held firmly in hand, but has been increased to such an extent that from 1881 to 1896, three additional members were received into the firm, two (Charles F. Hunter and Guy D. Goff) of whom remain. As during the life of Nathan Pereles, the business is virtually confined to the domain of probate, commercial, corporation and real estate law, and in this specialty Thomas J. Pereles is unquestioned authority.

That he has a high reputation for soundness of judgment in commercial and financial matters is also evidenced from the fact that though a republican, he has been twice appointed commissioner of the public debt, first on March 14, 1893, by Mayor P. J. Somers, a democrat, and for the second term on April 19, 1896, by Mayor William J. Rauschenberger, a republican.

Mr. Pereles is companionable, generous and sociable, and has an especial affection for the old Milwaukee high school from which he graduated, many of whose members are living in the Cream City and Chicago. He has been several terms president of the alumni association, which is among the strongest organizations of the kind in the northwest.

He is a member of the board of directors of the Milwaukee law library.

The Messrs. Pereles are stanch advocates of free education, and liberal contributors in that direction. It was several years before the fact became public who the liberal donors were that supplied children of indigent parents with school books free, which enabled them to attend the public schools. Such children would otherwise have been deprived of the advantage of free education. According to the school board reports, James M. and Thomas J. Pereles have filled the requisition for over two thousand children last year.

Mr. Pereles was married to Miss Nellie Weil, of Merton, Waukesha county, this state, on October 4, 1877. Of their children three are still living—Nath. Pereles, Jr., David Walter and Jeannette.

Mr. Pereles is a member of Independence lodge No. 80, Calumet Chapter No. 73, Ivanhoe Commandery, K. T., No. 24, Wisconsin Consistory and of Tripoli Temple, A. A. O. N. M. S.

#### LEANDER F. FRISBY.

Leander Franklin Frisby was born June 19, 1825, at Mesopotamia, Trumbull county, Ohio. His parents, Lucius and Lovina Frisby, were both natives of Vermont, but removed to Ohio with their family in 1817 and settled on a farm. During his early years, Leander worked upon his father's farm in the summer and attended the district school in the winter. At the age of eighteen he learned the trade of a wagon-maker, devoting all his leisure hours while learning his trade to reading and study. When he had become sufficiently skilled in his trade to earn wages he commenced a course of study at Farmington academy, a school having considerable local fame at that time. He paid his board and tuition by working at his trade out of school hours. After leaving the academy he taught school one winter in order to obtain money to go west. He took passage from Cleveland on the second of September, 1846, landing at Sheboygan on the fifth and going thence to Fond du Lac. Within two weeks after his arrival he was taken sick with chills and fever which disabled him until far into the winter. When he had sufficiently recovered to be able to work, the schools were all taken and, being in destitute circumstances, rather than apply to friends for aid, he sought any honorable work. He worked in a cooper shop diligently for two months for his board. Learning, in March, 1847, that he could obtain work at his trade in Beaver Dam, he borrowed fifty cents from a friend and started on foot for that place, a distance of thirty-six miles. He paid his borrowed money for supper and lodging, and starting without breakfast the next morning, traversed Rolling Prairie through a deep snow which had fallen the night before, the last ten miles over an unbroken road. He worked at his trade in Beaver Dam and Janesville during the spring and summer of 1847. With remunerative employment and returning health, the courage and hopefulness with which he was so largely endowed reasserted themselves and the new western country took on a more inviting aspect. The gloom and despondency



*Leander F. Frisby*





of the weary days of sickness and hardship during the previous fall and winter can only be appreciated by those who have had a similar bitter experience. In after years Mr. Frisby was always ready to lend a helping hand to young men starting in life under adverse circumstances.

In the fall of 1847 he resolved to engage in teaching, in order better to pursue his studies. He taught at Prairie Corners, in Walworth county, that winter, and the following year opened an academical school at Burlington, Racine county, which he carried on successfully for two years, in the meantime pursuing the study of law and spending the summer vacations in the law office of Blair & Lord, at Port Washington, where he was admitted to the bar in the fall of 1850.

On the first of October, 1850, he located at West Bend, where he continued to live and practice his profession for thirty-one years. The first three years he taught the village school during the winter, attending to his law business evenings and Saturdays. In the fall of 1853 he was elected the first district attorney of the new county of Washington, of which West Bend was made the county seat, and from that time forth he had a successful and lucrative practice.

In 1854 Mr. Frisby was one of the secretaries of the first republican state convention held in Wisconsin, at Madison, July 13, of that year. In 1856 he was appointed county judge of Washington county to fill an unexpired term. He was a delegate to, and one of the acting secretaries of the national convention held in Chicago in 1860, which nominated Abraham Lincoln. In the fall of 1860 he was elected to the state legislature in an intensely democratic district; was a member of that body at the breaking out of the civil war and chairman of the judiciary committee at its special session in June, 1861. He was twice nominated for Congress by the republicans of the fourth district, in 1868 and again in 1878, and although defeated both times he polled much the largest vote ever cast for a republican in the district, the last time reducing his opponent's majority to one hundred and thirty-five in a district which usually gave a democratic majority of from five to eleven thousand.

Mr. Frisby was a delegate to the republican national convention which nominated General Grant in 1872; the same year he was chosen president of the Wisconsin state convention of Universalists and was

re-elected to the same position in 1873. He received the nomination for attorney general on the republican state ticket in 1873, and although he went down with his ticket in the disaster which that year overwhelmed the republican party, he had the satisfaction of receiving over six hundred majority in his home county of Washington, which gave all the democratic candidates except the attorney general about two thousand majority. In 1881 Judge Frisby was again nominated for attorney general on the republican ticket and was elected, running far ahead of his ticket in his own village and county, an evidence which he had received several times before of the esteem in which he was held by those who knew him best. He was re-elected in 1884 and during his first term a constitutional amendment extended the term of all state officers one year, so that he served as attorney-general for five years. In 1881 Judge Frisby opened a law office in Milwaukee and was residing in that city at the time of his death, which occurred after a brief illness, April 19, 1889.

Mr. Frisby was tall and commanding in figure, affable and pleasing in address and of an eminently social nature. He was married in 1854 to Frances E. Rooker, of Burlington, Racine county, Wisconsin, who survives him, together with two of their five children, a daughter and a son; three children—two grown daughters and a son eighteen years of age—having died of diphtheria at Madison in 1883.

Mr. Frisby was regarded throughout the state as an able lawyer in all branches of the profession. He was an earnest and successful advocate before a jury and had much experience as an equity lawyer. His extraordinary industry in the work of his profession, together with a naturally judicial mind and keen perceptive faculties, placed him in the front rank among the lawyers of his generation in Wisconsin.

#### ROBERT LUSCOMBE.

Robert Luscombe, one of the best known of the younger members of the Milwaukee bar, was born in Wauwatosa, Milwaukee county, August 7, 1857. He is the youngest of three sons of one of Milwaukee's pioneer business men, the late Samuel D. Luscombe, who came





Robert Luxcombe





to Milwaukee from Massachusetts in 1843, and was for many years profitably engaged in the lumber trade. The keen practical ability and resolute energy which marked the career of the father are characteristic of the son. Educated in the public schools of Milwaukee, young Luscombe read law for two years in the office of Nath. Pereles & Sons; following the death of Nathan Pereles he entered the office of Joshua Stark, where, in a year, he completed his studies and was admitted to the bar in 1880. In 1882 he was elected supervisor from the fourth ward, on the republican ticket, and one year later was the successful candidate of the same party for city attorney. Mr. Luscombe's professional services to the city of Milwaukee covered a period of six years, two of which was in the capacity of city attorney and four as assistant. In addition to the performance of the duties usually incident to these offices, he was principally charged with the important duty of revising and consolidating the city charter and general ordinances. His continuance in the positions named is the best evidence that his duties were well performed. During this period Mr. Luscombe was necessarily in attendance on the sessions of the legislature and formed a very extensive and favorable acquaintance with public men throughout the state.

On retiring from the service of the city he engaged in the general practice of the law and for two years devoted a large portion of his time in protecting the mining interests of his clients in California. At the conclusion of this service Mr. Luscombe became engaged in looking after corporate interests and has given these much of his time ever since. His duties have been onerous and his success large. In the discharge of his duties he has made a very large acquaintance, and among them all there are none who are not his personal friends.

Besides influencing legislation in matters in which he has had a special interest Mr. Luscombe has taken a practical stand in matters looking to the improvement of the public service. He is the author of the law which took the control of the Milwaukee county insane asylum out of the hands of local politicians by authorizing the governor to appoint a majority of the trustees of that institution. As a matter of



history it may also be stated that he was the author of the bill providing for compulsory education in the English language which became known the country over as the "Bennett law." This was prepared at the instance of the tenth ward district school association of Milwaukee. In its political effect no act of the legislature of Wisconsin ever wrought a more marked revolution.

In his political views Mr. Luscombe has been in harmony with the republican party and has stoutly and efficiently championed its measures.

#### JAMES GREELEY FLANDERS.

Mr. Flanders was born in New London, New Hampshire, December 13, 1844. In 1848 he became a resident of Milwaukee and has continued to be such. Until 1858 he attended the schools of that city. The next step in his education was taken at Phillips (Exeter) academy in his native state, from which institution he was graduated in 1861. In that year he was admitted to Yale college, but did not enter there until two years later. In the intervening period he was engaged in teaching school in Milwaukee. The course in Yale was entered upon in 1863 and finished, with honors, four years later.

Mr. Flanders' inclination to the law is probably inherited. His grandfather, James Flanders (1740-1820) was a member of the New Hampshire bar and a legislator of that state, who performed well every duty intrusted to him and maintained his character as a brave and able man among the heroes of that period. Walter P. Flanders, the father of James G., was also a member of that bar. He did not, however, resume practice after becoming a resident of Milwaukee in 1848, but became largely interested in real estate and in enterprises looking to the development of that city and the surrounding county. The time of his arrival in the west saw the opening of the movement which resulted in the building of numerous lines of railways. Entering into the spirit which actuated the promoters of these various enterprises, Mr. Flanders became prominently identified with the Milwaukee & Mississippi Railway company, serving as its first treasurer. Mrs. Flanders, the mother of James G., was a native of Newburyport, Massachusetts, her maiden



Nelke & Co. Printers

James G. Knicker







name being Susan Everett Greeley. She was of a home-loving disposition, and domestic in her tastes; enjoyed the sincere respect of her large circle of acquaintances, and performed well her part as wife and mother.

James G. Flanders' general education, as we have seen, was obtained at institutions of the highest standing. He was quite as solicitous concerning the thoroughness of his professional education as about the former. He entered upon the study of law in the office of Emmons & Van Dyke, of Milwaukee, then lawyers of high standing, and now men whose professional reputations are established beyond question. The learning and experience secured here were supplemented by a full course in the college of law of Columbia university. After being graduated there, Mr. Flanders was admitted to the bar of New York by the supreme court.

In July, 1869, the subject of this biography entered upon the practice of his profession in Milwaukee as a partner of DeWitt Davis, the firm name being Davis & Flanders. Later, A. R. R. Butler became a member of the firm, the style of which was changed to Butler, Davis & Flanders. This strong combination continued until 1877, when the junior member withdrew to organize the firm of Flanders & Bottum (E. H.). In July, 1888, after the appointment of James G. Jenkins to the United States district judgeship, the firm of which he was the senior member united with Messrs. Flanders & Bottum to constitute the partnership of Winkler, Flanders, Smith, Bottum & Vilas.

We have, then, in Mr. Flanders the antecedent of two generations bred to the law; his thorough general and professional education and association, as student and practitioner, with men of high general and professional attainments. In addition, the result of years of patient industry, the consequent accretion to a receptive, strong, agile and practical mind, and the training in oratory, the skill in the trial of causes and the character which has come out of these, strengthened by tests and established beyond successful assault.

Under these conditions, what else might be expected than the successful and accomplished lawyer? What but the advocate, whose skill is admitted because hundreds of times demonstrated in contests with

the best professional talent in the state and in adjoining states? What but loyalty to causes entrusted to his care, loyalty to the courts in which these causes have been tried, and to the law? In all these respects the character and attainments of Mr. Flanders are verities in the history of Wisconsin's bar. As a member of one of the strongest firms in the state he has been engaged in the trial of many strongly contested and important cases, both civil and criminal. Space forbids mention of more than a few of these. In 1889 he assisted the district attorney of Ashland county in the prosecution of the assistant cashier of the Hurley Iron Exchange bank, Phelps Perrin, and E. W. Baker, on the charge of the larceny of forty thousand dollars. In a series of five trials, each lasting from three to five weeks, Perrin was convicted and was finally sentenced to five years' imprisonment. Baker was twice convicted, the first conviction having been set aside by the supreme court. He was also sentenced to five years' imprisonment. The Milwaukee Dust Collector case, involving the titles to patents worth some two hundred and fifty thousand dollars, was tried by him for the plaintiff. During the progress of the litigation a very large sum of money was paid into court as royalties by the defendants. He has also successfully defended the city of Ironwood, Michigan, in the United States circuit court for the northern district of Michigan, in a case involving the validity of one hundred and fifty thousand dollars of its bonds. The judgment there obtained has been affirmed in the federal court of appeals.

Mr. Flanders has recognized that every member of society owes it the special duty of devoting some portion of his time and talents to the advancement of the public good by discharging such official duties as his fellow-citizens may call him to perform. Accordingly he has given of his time and ability as a member of the school board of the first ward, having served during the years 1875-1877. In the latter year he also served as a member of the popular branch of the state legislature. It was on the floor of that body that the writer first heard Mr. Flanders speak. The impression then made of his ability as an orator is not yet effaced. A fine personal appearance was supplemented by a clear, resonant voice, an articulation that was charming, a vocabulary







*Geo. P. Miller*

that was rich and responsive to the demand, and matter that was pertinent to the subject under discussion. Twenty years of culture and experience have added much to the large capital with which he was then endowed and have produced the James G. Flanders of to-day.

In political affairs Mr. Flanders has usually acted with the democratic party. In 1896 he was a delegate at large to the national democratic convention. His views of public affairs did not coincide with the action of that convention and he declined to be bound by it. Subsequently he was a delegate at large to the convention of gold democrats at Indianapolis.

Though a member of the Milwaukee, Country and Deutscher clubs, Mr. Flanders' engagements and home attachment do not permit him to give much time to social affairs, independently of those in which his family are participants.

His religious affiliations are with the Episcopal church, and he is a regular attendant upon the services at St. Paul's.

Mrs. Flanders, formerly Mary C. Haney, is the daughter of Robert Haney, one of the early hardware merchants and pioneers of Milwaukee. Mr. Flanders became united to her in marriage June 18, 1873. They have three children—Charlotte Bartlett, Kent and Roger Y.

#### GEORGE PECKHAM MILLER.

George P. Miller, the second son of Benjamin Kurtz Miller\* and Isabella (Peckham) Miller, was born in Milwaukee, Wisconsin, on October 12, 1858. He is a grandson of Judge Andrew G. Miller, who was federal judge in Wisconsin from 1838 to 1872, and of George W. Peckham, who was a prominent lawyer of his day of Albany, New York—a brother and a partner of Rufus W. Peckham, for many years one of the judges of the court of appeals of the state of New York. He is a second cousin of Rufus W. Peckham, one of the present justices of the supreme court of the United States, and of his brilliant brother, Wheeler H. Peckham, nominated a justice of the same court by Presi-

\*Since the first forms of this volume have gone to press Mr. Miller's death has occurred (September 12, 1898) at his home in Milwaukee. A biography of the deceased will be found on page 428.



dent Cleveland. As his father, both grandfathers and many other relatives have been lawyers and judges, he may properly be said to belong to a legal family. He certainly was born and reared in a legal atmosphere and probably inherited his legal tendencies, if not his talents.

George P. Miller received a thorough mental training. His father, who had always been a successful lawyer and well to do, spared neither pains nor money on his education. He was first carefully drilled in the primary and academic branches, after which he enjoyed a complete classical course at Pennsylvania college, Gettysburg, from which institution he was graduated in 1877. Upon his graduation he intended going into business and the late Alexander Mitchell promised him a position in the Wisconsin Marine & Fire Insurance Company bank as soon as its new banking building, then in course of construction, was completed. In the meantime his father proposed a trip to Europe and a term at a German university. The effect of this European trip and a few weeks at a German university had a great influence on the entire life of this young man, because they resulted in his determining to study law. His father suggested that he continue his studies in Germany, which he did, studying law and the philosophy of law at the German universities at Göttingen and Breslau from 1877 to 1880, when he took the degree of *Juris utriusque* Doctor, at Göttingen. He then returned to Milwaukee and entered the office of Finches, Lynde & Miller, of which his father was a member, and in the following year was admitted to the bar at Milwaukee.

From the very first his father's partner, the brilliant trial lawyer, Henry M. Finch, was interested in him and allowed him to assist him at every trial in court and in all professional matters in the office until his death in 1883. The subject of our sketch thus enjoyed exceptional experience and training and Mr. Finch remained his warm friend and did everything to advance his interests and position in the legal fraternity. At this time the law firm of Finches, Lynde & Miller enjoyed in the highest degree the respect and confidence of the community, and its large and wealthy clientage. In three years, 1883 to 1885, Henry M. Finch, Asahel Finch and William P. Lynde died, leaving



Benjamin Kurtz Miller, who had devoted himself to the office and counseling department of the business of the firm, as the sole surviving partner. These deaths forced George P. Miller and his brother, Benjamin Kurtz Miller, Jr., to the front, and at once they were entrusted with some of the most important litigation in the state. Many lawyers doubted whether these young men, one twenty-eight and the other but twenty-six years of age, could hold the large and profitable business of Finches, Lynde & Miller. With the aid of their father, who was a man of great ability, they not only kept the business of Finches, Lynde & Miller, but increased it. They continued to maintain the same high standards in morality and business methods adopted by their father and the other members of the firm of Finches, Lynde & Miller. Their professional engagements so increased that in 1890 they admitted George H. Noyes and in 1895 George H. Wahl into the partnership, and the name of the firm was changed to Miller, Noyes, Miller & Wahl.

The most prominent characteristic of George P. Miller is that he combines the practical sense of a business man with the knowledge and experience of the lawyer. He has been successful in both respects, and that he is engaged as counsel by many of the great corporations and in much of the heavy litigation, shows how he is regarded by the public. He never regards a lawsuit as anything but a means to an end and that every controversy should be regarded as a question of finance, so that a favorable compromise is to be preferred to an expensive litigation. A lawsuit with him is a battle. Its object, not the battle itself, but its financial results; not the settlement of abstractions, but securing financial returns as speedily and cheaply as possible; not absolute justice but by settlement or litigation the largest financial return to the client.

Mr. Miller is a democrat by conviction and inheritance. He is connected with many clubs and societies. He was married in 1887 to Laura A. Chapman, daughter of T. A. Chapman, Milwaukee's great merchant, and this union has been blessed by two daughters.

In conclusion the writer cannot do better than to quote the words of one who has long known Mr. Miller as a man and a practitioner:

"Although still a young man, he has already attained a leading

place at the bar. He is endowed with keen and exact powers of analysis and great readiness in devising means to ends. In the solution of legal problems, his methods are those of the German university and include not only the critical examination of current authorities, but also an historical investigation into the development of the law.

"Mr. Miller's exposition of legal problems and complicated questions of fact is remarkable in its clearness; he has the power of arranging and stating involved facts and figures so clearly that their relations cannot be misunderstood. Within the last few years Mr. Miller's principal work has been done within the equity jurisdiction, and he was particularly prominent in the litigation involved by the Northern Pacific railroad receivership. Among other prominent cases in which Mr. Miller has taken an active part are those regarding the validity of the bonds of the city of Watertown and of the city of Milwaukee."

#### BENJAMIN KURTZ MILLER, JR.

B. K. Miller, Jr., the eldest son of Benjamin Kurtz Miller and Isabella (Peckham) Miller, was born at Milwaukee, Wisconsin, on June 6, 1857. He attended as a youth the best schools of his native city and was graduated in 1877 from Pennsylvania college, Gettysburg, Pennsylvania. He returned to Milwaukee and studied law in the office of Finches, Lynde & Miller and was admitted to the bar in 1880. After the death of his father's partners in 1885 he and his brother, George P. Miller, became members of the firm of Finches, Lynde & Miller, who, with their father, constituted the sole members of that firm. The fact that the business of the firm was increased after 1885 is sufficient evidence of the ability of the subject of this sketch. The business of the firm became so large that in 1890, George H. Noyes, and in 1895 George H. Wahl were admitted as members of the firm.

B. K. Miller, Jr., is not only a good lawyer, but is literary in his tastes. His intellectual interest is not confined to legal questions, but embraces all philosophical and scientific subjects. It can be said there is no branch of knowledge in which he is not somewhat informed and is considered one of the best informed men in Milwaukee on general as well as philosophical subjects. He owns the largest and best selected

library on political economy in the state. For the last ten years he has taken a vacation each second year and visited every known country in the world. He is a great traveler and is as much at home in China, or in South America, as in his own country or Europe. He is a man of very quick perceptions, generous and a good business man. He is unmarried. In politics he is independent.

#### MISCELLANEOUS NOTES.

The following mention of some of the members of the Milwaukee bar who, after spending a few years in legal practice as such, removed and gained honorable distinction elsewhere, is from chapter 32 of the History of Milwaukee County, that chapter being from the pen of Joshua Stark:

Burr W. Griswold, who came from New York in 1849 and was for three or four years associated with Francis Randall, returned to New York about 1854 and was for years a member of the distinguished law firm of Blatchford, Seward & Griswold.

Orlando L. Stewart tried the west a few years, beginning with 1850. In 1856 he was associated with Francis Bloodgood, practicing as the firm of Stewart & Bloodgood. Later he returned to New York, where his career has since been highly successful.

Wheeler H. Peckham, of New York, was law partner with Mr. Bloodgood in 1859. After a brief residence in Milwaukee he too removed to New York, where his distinguished professional labors as prosecutor of the Tweed ring, and in many other celebrated cases, have given him national fame.

Wallace Pratt came to the Milwaukee bar early in 1857. In 1858 he was associated as partner with Ephraim Mariner. Early in 1859 he became a partner with John W. Cary, and a few years later was a member of the law firm of Ogden & Pratt. About 1870 he removed to Kansas City, and there became prominent and successful as attorney for railroad and other corporations.

Nelson C. Gridley, after practicing law in Milwaukee several years, being for a time associated with Matt. H. Carpenter, removed to Chicago, where he has since been engaged in successful practice as a patent lawyer.



Edwin L. Buttrick practiced law in Milwaukee from 1855 to 1862 and was a member of the firm of Butler, Buttrick & Cottrill. He entered the army in the fall of 1862 as lieutenant colonel of the twenty-fourth Wisconsin, and was later colonel of the thirty-ninth regiment. After the war he took up his residence in West Virginia, where he has been prominent as a lawyer and a citizen.

John B. D. Cogswell was a member of the Milwaukee bar from December, 1857, for several years. His ability as a lawyer and as a public speaker gave him, during the few years of his residence a prominent position at the bar and in business and political circles. During the years 1862 to 1867 he held the office of United States district attorney. Not long after he returned to Massachusetts, where he had formerly resided, and has since served in the legislature of that commonwealth.

Cushman K. Davis, now serving his second term in the United States senate, representing Minnesota, read law with the firm of Butler & Winkler in Milwaukee, and was there admitted to the bar and began practice, removing from there to St. Paul about 1865.

James MacAllister, born and educated in Glasgow, Scotland, studied law at the Albany law school, and after spending several years as principal of one of the public schools of Milwaukee entered the legal profession in February, 1865, and continued in practice for nearly ten years. A decided preference for literary pursuits led him, in 1874, to accept the position of superintendent of schools, which he held until 1883, with the exception of an interval of two years. In 1883 he was selected by the board of education of Philadelphia to superintend the public schools of that city, and after several years' service in that position he was honored by appointment to the position of president of the Drexel institute of that city, which position he now holds.

Henry H. Markham became a member of the Milwaukee bar in February, 1867, and practiced law there with his brother, George C. Markham, until 1878, giving special attention to causes in admiralty with marked success. For necessary change of climate he then removed to Pasadena, California, and has since been honored with a term as governor of that state and also a term as representative of his district in Congress.















